



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 09-05444
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

May 20, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to provide adequate information to mitigate security concerns for personal conduct, alcohol consumption, and psychological conditions. Eligibility for access to classified information is denied.

On April 24, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. (Item 5) On September 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G, psychological conditions under Guideline I, and personal conduct under Guideline E. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 11, 2010. (Item 3) She answered the SOR on October 11, 2010, which was received at DOHA on October 29, 2010. She admitted all allegations under the three guidelines with explanation. She elected to have the matter decided on the written record. (Item 4) Department Counsel submitted the Government's written case on December 30, 2010. Applicant received a complete file of relevant material (FORM) on January 19, 2011, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. She did not provide any additional information in response to the FORM. The case was assigned to me on March 14, 2011.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 54 years old. She left high school in the 10th grade but obtained a General Education Diploma (GED) at age 21. She has been employed by a defense contractor as a utility laborer for over three years. Prior to that, she worked at various short-term general labor positions. She also had multiple periods of unemployment. She was married in 1977, and divorced in 1978. She married again in 1988 and divorced in 1998. She does not have any children. She has not served in the military but was cleared for access to classified information for a short time in 2005. (Item 5)

Applicant admits she consumed alcohol at times to the point of intoxication from approximately 1997 until September 2009. (SOR 1.a) She admits she was arrested and found guilty of driving while intoxicated in 1993, and sentenced to a fine and ordered to attend an alcohol safety program. (SOR 1.b) Applicant admits she voluntarily presented herself to a hospital emergency room in June 2006, and was treated for alcohol withdrawal and diagnosed as alcohol dependent and having a personality disorder. She continued to consume alcohol after receiving the diagnosis. (SOR 1.c, 1.d, 1.e) Applicant explained that her consumption of alcohol was in "extreme and measured moderation". Applicant admits she had a verbal altercation with a co-worker after work after drinking alcohol. She explained that the incidents happened after the co-worker was aware of the potential impact of the incident on Applicant's employment. Applicant viewed the incidents as frivolous harassment. (SOR 1.f and 1.g)

Applicant admits she was treated in 2006 for a psychotic disorder, not otherwise stated, after hearing voices and having visual hallucinations. (SOR 2.a) She also admits to having intermittent hallucinations since age 14 (SOR 2.b) However, she notes that she does not presently have such hallucinations. Applicant admits that in response to Question 24 on the e-QIP asking if since the age of 16 or in the last seven years has she used illegal drugs, she admitted only marijuana use from 1975 to 2006 with varying frequency, but did not include cocaine use. (SOR 3.a) She admits to using marijuana with varying frequency from 1975 until June 2006 (SOR 3.b), and cocaine with varying frequency from 1974 until at least February 2006. (SOR 3.c) She explained that her marijuana and cocaine use was miniscule and sporadic and not regular. (Item 4)

In response to questions from an OPM security investigator, Applicant stated she was arrested and convicted of driving while intoxicated in July 1983. She had been at a bar with friends and consumed six or seven beers before driving home. She paid a fine and attended alcohol awareness classes. She also told the investigator that she was hospitalized for three days in July 2006 for hallucinations after consuming alcohol. However, she had not consumed alcohol for three days before the hallucinations. She had hallucinations on only one occasion. She also stated that she was not diagnosed as alcohol dependent and was not told to abstain from alcohol consumption. She informed the investigator of a verbal altercation with a co-worker in April 2009. She acknowledged that at the time she consumed three or four beers and one or two drinks of alcohol since she was not on duty. She stated she used marijuana starting in high school in February 1975. She stopped using in June 2006 because of her present employment. She admitted to the investigator that she used cocaine but her last use was in January or February 2006. She stopped using cocaine because it was no longer fun and a waste of money. She did not list her cocaine use on her e-QIP because she did not believe she needed to list every drug she used. She believed if she listed the marijuana use it would be realized that she was probably using other drugs. She also believed knowledge of her cocaine use may prevent her from obtaining a security clearance. (Item 6)

In her September 16, 2009 response to DOHA Interrogatories, Applicant admits that she consumes alcohol sometimes to the point of intoxication. The last time she was intoxicated from the use of alcohol was September 5, 2009, which was two weeks before she completed the interrogatory. She admitted that she still consumes alcohol. She admits to receiving medical treatment due to the use of alcohol in 2006. She also admits the 1983 arrest and conviction for driving while intoxicated (Items 11 and 12), and use of marijuana at least once a week from February 1975 until June 2006. (Item 10)

Medical records show Applicant was hospitalized in June 2009 for hallucinations caused by alcohol consumption. She also admitted to having hallucinations since age 14 when ghosts and the grim reaper appeared to her. Her discharge diagnosis in 2009 was psychotic disorder not otherwise specified, alcohol dependence, and alcohol withdrawal which was treated. She was provided group and individual therapy to help understand the nature of her condition, the consequences of continued drinking, the effects of the alcohol, and causes for the hallucinations. She was provided assistance in making follow-on appointments for mental health and alcohol programs. (Items 7, 8 and 9)

Policy

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Alcohol Consumption

Excessive alcohol consumption is a security concern because it often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. (AG ¶ 21) Applicant admits consuming alcohol sometimes to the point of intoxication from 1975 until September 2009. She admits that she was arrested, convicted, and sentenced for driving while intoxicated in 1983. She admits to being hospitalized after alcohol consumption and being diagnosed as alcohol dependent in 2006. She continued drinking alcohol after being diagnosed as alcohol dependent. She also admits to two verbal altercations with a co-worker after work after consuming alcohol.

Applicant's excess consumption of alcohol and her diagnosis as alcohol dependent raises Alcohol Consumption Disqualifying Conditions (AC DC) AG ¶ 22(a) (alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent); and AC DC AG ¶(d) (diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence). The only information that Applicant was ever convicted of alcohol-related issues was her driving while intoxicated conviction in 1983. This may raise AC DC AG ¶ 22(g) (failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence). The information shows Applicant completed all aspects of her sentence as a result of this conviction, so this disqualifying condition is not raised.

I considered Alcohol Consumption Mitigating Condition (AC MC) AG ¶ 23(a) (so much time has passed or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) and determined that it does not apply. While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of misconduct, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation. Applicant admits that she last consumed alcohol to the point of intoxication in September 2009 but that she still continues to consume alcohol in "extreme and measured moderation". She presented no evidence to show she is involved in alcohol counseling of any sort. She has not provided information to meet her burden of establishing life circumstance changes to indicate she has reformed or been rehabilitated. It is likely her previous alcohol consumption problems will recur. Her present circumstances and life style are not sufficiently changed to show that her past conduct does not now reflect adversely on her current reliability, trustworthiness, and good judgment.

I also considered AC MC AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)). The mitigating condition does not apply. Applicant acknowledges her consumption of alcohol but not that it is a problem or that she is alcohol dependent. However, medical records do establish that she was diagnosed as alcohol dependent. Since she is alcohol dependent, she has not established a pattern of alcohol abstinence or even responsible use of alcohol. She does not indicate that she is now participating or has participated in any alcohol-related treatment except for the treatment required by the court as a result of her 1983 conviction for driving while intoxicated and the treatment received during her 2006 hospitalization for hallucinations resulting from alcohol consumption. In total, Applicant has not presented sufficient information to meet her burden to establish that her past

alcohol use is under control and her alcohol consumption does not reflect now on her reliability, trustworthiness, and good judgment. Applicant has not mitigated security concerns for alcohol consumption.

Psychological Conditions

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (clinical psychologist or psychiatrist) employed by or acceptable to and approved by the U. S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline (AG ¶ 28).

Applicant voluntarily presented herself to the emergency room complaining of hearing voices. She was referred to and seen by a physician in the mental health clinic. She remained in the hospital for two days. She admitted she had past hallucinations concerning ghosts and the grim reaper. On discharge, she was diagnosed with a personality disorder not otherwise specified and alcohol dependence. This diagnosis raises Psychological Conditions Disqualifying Conditions (PSY DC) AG ¶ 28(a) (behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid or bizarre behavior); and PSY DC AG ¶ 28(b) (an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness). Since the psychological report presents substantial evidence to raise the disqualifying conditions in AG ¶¶ 28(a) and (b), the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under psychological conditions. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts.

In evaluating the mental health professional's opinion, I considered Psychological Conditions Mitigating Conditions (PSY MC) AG ¶ 29(a) (the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan); PSY MC AG ¶ 29(b) (the individual has voluntarily entered a counseling or treatment program for the condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional); PSY MC AG ¶ 29(c) (recent opinion by a duly qualified mental health professional employed by or acceptable to and approved by the U. S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation); PSY MC AG ¶ 29(d) (the past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved and the individual no longer shows indications of emotional instability); and PSY MC AG ¶ 29(e) (there is no indication of a current problem). I find that none of these mitigating conditions apply. While Applicant's condition may be controllable by

treatment, she has not demonstrated she voluntarily entered into and is consistently in compliance with any treatment plan. She does not indicate she is currently receiving counseling or treatment for her personality disorder or alcohol dependence. The last indication of an alcohol or psychological issue was in September 2009. However, there is no indication that the alcohol-related issues were temporary and no longer causing emotional instability. The personality disorder and alcohol dependence are not temporary, and there are no indications they have been resolved. Applicant is not now in any mental health treatment program. Accordingly, it is clear that Applicant has not mitigated security concerns based on psychological conditions.

Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government.

Applicant provided only a partial answer to a question concerning her use of illegal drugs. She indicated marijuana use but not cocaine use. Later, she admitted to the use of cocaine from 1974 until February 2006. The failure to provide full and complete information concerning drug usage raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness). Her use of marijuana and cocaine raises PC DC ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, . . .).

Applicant admits that she deliberately did not provide information on her security clearance application concerning her cocaine use because in part she feared it would adversely affect her ability to obtain a security clearance. There is a security concern for any omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance. Applicant's failure to provide information on her cocaine use was done knowingly and deliberately with intent to deceive. The use of marijuana and cocaine is a criminal act. The use of illegal drugs and commission of a criminal act would, if known, affect her personal,

professional and community standing. I considered all mitigating conditions under personal conduct and determine that none apply. I find against Applicant as to personal conduct.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has not established that her psychological condition and alcohol consumption are under control and do not cause a security concern. She abused alcohol and drugs over a long period of time. While she indicates she no longer uses illegal drugs, she does admit to some alcohol consumption after being diagnosed as alcohol dependent. She deliberately did not provide information on her use of cocaine. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her alcohol consumption, psychological condition, and personal conduct. Eligibility for access to classified information is denied.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a - 1.g:	Against Applicant

Paragraph 2, Guideline I:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant
Paragraph 3: Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a - 3.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Access to classified information is denied.

THOMAS M. CREAN
Administrative Judge