



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



In the matter of:)	
)	
)	ISCR Case No. 09-06746
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

March 25, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On May 5, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance for her position with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigations and Applicant's response to the Interrogatories, DOHA could not make the preliminary affirmative finding required to issue a security clearance. On May 5, 2010, DOHA issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G. These actions were 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 answered the SOR on September 14, 2010. She admitted all six allegations of alcohol consumption under Guideline G. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 21, 2010. The case was assigned to me on December 1, 2010. DOHA issued a Notice of Hearing on December 28, 2010, for a hearing on January 25, 2011. I convened the hearing as scheduled. The Government offered eight exhibits, marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 through 8. Applicant testified on her behalf, and offered 11 exhibits marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through K. DOHA received the transcript of the hearing (Tr.) on February 2, 2011.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted all allegations under alcohol consumption. Her admissions are included in my findings of fact.

Applicant is 47 years old and has worked as an engineer for a defense contractor for approximately two years. She is a college graduate, married, and has two special needs children. This is her first request for a security clearance. (Gov. Ex. 1, e-QIP, dated May 5, 2009)

The Government alleges, and Applicant admits, that she consumed alcohol, at times to the point of excess, from 1977 until November 2009. (SOR 1.a) Her alcohol consumption required inpatient treatment in 2004 and continued aftercare. (SOR 1.b) Her continued consumption of alcohol required outpatient treatment from June 23, 2005, until August 15, 2005 and she was diagnosed as alcohol dependent. (SOR 1.c) She continued to consume alcohol until April 2008 even though diagnosed as alcohol dependent. (SOR 1.d) She was terminated by her employer for consuming alcohol in April 2008 in violation of the employer's policy. (SOR 1.e) Her excessive consumption of alcohol caused intensive outpatient treatment in June and July 2008 for alcohol dependence. (SOR 1.f) (Gov. Ex. 2, Applicant's Affidavit, dated December 30, 2009; Gov. Ex. 3, Affidavit, signed January 15, 2010; Gov. Ex. 4, 5, 6, 7, and 8, Treatment Records, dated from November 2004 until June 2008)

Applicant candidly admitted at the hearing that she is an alcoholic, and has been diagnosed as alcohol dependent. She admits that she cannot even take a sip of wine without alcohol causing her an issue. (Tr. 22) Her last drink of alcohol was Thanksgiving 2009 when she consumed a few sips of wine. After consuming the sips of wine, she immediately contacted her sponsor realizing she could not handle the consumption of even a few sips. Her last drink before that time and the last time she drank to excess or was intoxicated was May 2008. Since May 2008, she has been a very active member and firm believer in Alcoholics Anonymous (AA). She started with AA in July 2003 but

had a chronic relapse into alcoholism. She attended a Chemical Dependence program at a recognized addiction treatment facility for a month in 2004 and for a month in 2005. (App. Ex. F, Letter, dated September 8, 2010) She started again with AA in 2008 but her motive was not to stop drinking but to get out of trouble. Later in 2008, she was willing to do something different and started being serious about AA. She lost her job (App. Ex. H, Letter, dated September 3, 2010), her husband started divorce proceedings, and she was in danger of losing her children. She and her husband attend marriage counseling but they are still in a good family relationship. (App. Ex. G, letter, dated September 1, 2010) She became brutally honest with her AA sponsor in her desire to try something else since her way was not working. She learned the situations that were high risk for her and how to deal with them. She learned how to stay away from situations that led to alcohol consumption. She was honest with herself that she needed a new and better way of life. She not only stopped drinking but found a better way of dealing with life issues. She was no longer a victim, could determine her part in the situation, and change what needed to be changed. She was no longer powerless and could be proactive in determining her part in the situation. She does attend functions where alcohol is served but only if she has support and is with someone that will assist her in dealing with her addiction. (Tr. 24-32, 41-52)

Applicant does not do anything without consulting her sponsor or a friend from AA. She attends about four or five AA meetings a week of her own group or another AA group depending on the needs of her children. She also attends meetings of other alcohol support groups two or three times a week. She does something daily for recovery including talking to her sponsor or AA friend, doing morning meditation, or evening reflection. She talked to someone in AA almost every day to overcome her addiction. She has been with her current sponsor about 18 months and has even been a sponsor herself. She realized that some of the triggers in her life that led to alcohol consumption were her family and the special needs of her children. She dealt with the stressors by knowing them, being honest about the stressors, and knowing when to ask for help. There are still stressors in her life, but she learned to deal with them without drinking alcohol. (Tr. 30-34, 41-42)

Applicant's father became ill in January 2011 and she has had to spend time in another state to assist with his care. When Applicant is caring for her father, she contacts the local AA chapter and attends their meetings when possible. They assist her and she is able to talk to them and receive advice. Some AA members in the other state have even come to the hospital to counsel and talk to her. She has been in the other state for most of the 25 days before the hearing and has attended four or five AA meeting there. She speaks with her sponsor almost every day. She continues to see the counselors in the aftercare program from her last outpatient treatment even though she completed the required two years of the program. She continues to attend the continued aftercare program since she finds the program beneficial. To stay in the program, she must attend two AA meetings weekly. She has a great support system from her sponsor, her AA friends, her aftercare participants, and her church. (Tr. 40-49)

Applicant's job performance for 2009 and 2010 is excellent. (App. Ex. I, Performance Evaluations, dated June 25, 2009, and May 10, 2010) Her supervisor notes that he sees Applicant daily and her work is excellent. She is a very responsible and trustworthy employee and poses no risk in evaluating and handling sensitive information. (App. Ex. J, Letter, date August 31, 2010) The military representative on her contract notes that her support of the military program has been excellent and he considers her a responsible and trustworthy employee and a technical asset to the organization. (App. Ex. K, Letter, dated September 13, 2010)

Four active participants in AA wrote that Applicant is also an active participant in the recovery program. She attends their same meetings at least twice a week. They note she is committed to the recovery process, and she provides intelligent and compassionate assistance to others in the program. They have not seen her deviate from the program and have observed her consistent motivated dedication to her recovery, her family, and her work. They evaluate her as dependable, responsible, and trustworthy. (App. Ex. A, Letter, dated August 30, 2010; App. Ex. B, Letter, dated August 30, 2010; App. Ex. C, Letter, undated; App. Ex. D, Letter, dated August 30, 2010) Applicant's aftercare recovery coordinator notes that Applicant has completed the intensive outpatient program, and that she has been attending continuing care regularly and appears committed to recovery and shows satisfactory progress. (App. Ex. E, letter, dated September 1, 2010).

Policies

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 for 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Alcohol Consumption

Applicant admitted the six allegations of alcohol consumption and that she is alcohol dependent and an alcoholic. 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's excess consumption of alcohol and her diagnosis as alcohol dependent raises Alcohol Consumption Disqualifying Conditions (AC DC) AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence), and AD DC AG ¶ 22(e) (evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program). Her continued drinking of alcohol after completion of treatment programs in 2004 and 2005 raise AC DC AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program). There is no information that Applicant was ever convicted of alcohol-related issues so AC DC AG ¶ 22(g) (failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence) 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 determine that it applies. 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 was last intoxicated in May 2008. Since then, she has only had a sip of wine in November 2009. She continues with her alcohol treatment and attendance at AA meetings. She understands the stressors in her life that led her to excessive alcohol consumption and learned to deal with the stressors without turning to alcohol. She is an active participant in alcohol prevention programs and aftercare. She established that her life circumstances have changed since May 2008. She knows the risk of even the slightest consumption of alcohol and how it affects her ability to not drink alcohol. A significant period of time, almost three years, has passed since the last incident of excessive alcohol consumption, and 18 months have passed since her last consumption of any alcohol. The evidence shows a change of circumstances indicating Applicant has reformed or been rehabilitated. It is unlikely her previous alcohol consumption problems will recur. Her present circumstances and life style 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 applies. Applicant acknowledges that she is an alcoholic and she cannot even have a sip of alcohol. She established she does not drink, regularly attends AA meetings a number of times a week, and continues with an aftercare program even though it is not required. Applicant established a clear pattern of no consumption of alcohol. In total, Applicant has 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 mitigated security concerns for alcohol consumption.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 a security clearance 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. I considered that Applicant is an excellent employee and is considered by her supervisors as trustworthy and reliable. Applicant was candid and straightforward concerning her addiction problem. She admitted she is an alcoholic and could not even take one sip of an alcoholic beverage. While she admittedly has an addiction problem, she has taken sufficient steps to deal with and overcome her addiction. She established she is wiser and more focused about alcohol consumption. There is every indication that her alcohol consumption is under control since she does not consume alcohol. Her last excessive use of alcohol was almost three years ago, and her last use of alcohol was slight and over 18 months ago. She continues to be an active participant in recovery and aftercare programs. Her use of alcohol is in the past and there is every indication that she has good self control, judgment, and willingness to abide by rules and regulations. The record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the alcohol consumption security concerns.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge