



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-03591
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Alcohol Consumption concern. Applicant’s alcohol use resulted in convictions in 2004 and 2009 for driving under the influence (DUI). After her last DUI in 2009, Applicant voluntarily entered treatment, became actively involved in Alcoholics Anonymous, and has since abstained from alcohol. Applicant’s past alcohol use no longer casts doubt on her current judgment and reliability. Clearance is granted.

Statement of the Case

On January 11, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline G (Alcohol Consumption).¹ On March 10, 2012, Applicant answered the SOR (Answer) and requested a hearing.

¹ DOHA took this action under Executive Order (EO) 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 implemented by the Department of Defense on September 1, 2006.

On April 10, 2012, Department Counsel indicated the Government was ready to proceed. I was assigned the case on April 19, 2012 and, after coordinating with the parties, scheduled the hearing for May 24, 2012. At hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant appeared at the hearing, testified, and offered Applicant's Exhibits (AE) A through D.² These documents were also admitted without objection. The transcript (Tr.) was received on June 5, 2012.

Findings of Fact

Applicant is in her fifties. She graduated in the mid-1980s from college with a degree in marine engineering and then immediately began working for a federal contractor. When her former employer closed down its shipbuilding division, Applicant was hired by her current employer. She has been with her current employer for over 25 years and has held a security clearance since 1986 without incident.³

Applicant was arrested in 2004 for DUI after having consumed wine earlier in the evening. She was convicted and ordered to attend an alcohol safety and education program. She successfully completed the program and complied with all other terms of her sentence. At the time, Applicant chalked up the incident to just being at the "wrong place, [at the] wrong time."⁴ She voluntarily reported her 2004 DUI on her current security clearance application.⁵

Applicant was again arrested in 2009 for DUI. Prior to the arrest, Applicant had been drinking wine at home during the early evening hours and got hungry. She drove to a local fast food restaurant and was pulled over by the police, who witnessed her driving erratically. Applicant realized, as this was her second incident involving alcohol, that she had a problem with alcohol and "no longer considered it was wrong place, wrong time, or just bad luck."⁶ Prior to going to court, Applicant voluntarily entered an intensive outpatient treatment program through her employer's employee assistance program. Even though there was no breathalyzer result to confirm the police officer's observation, Applicant accepted responsibility for her conduct and pled guilty to the DUI charge. She has complied with the terms of her sentence and successfully completed the treatment program.⁷ Applicant reported her 2009 DUI to her employer's security

² AE D is Applicant's complete Answer.

³ Tr. at 27-28, 41; GE 1.

⁴ Tr. at 28, 46-47. *See also* GE 3.

⁵ GE 1 at 23.

⁶ Tr. at 29.

⁷ Tr. at 29-36, 43-47; GE 2 – GE 4; AE D.

office, because she recognized from her security training that she was required to report this adverse information regardless of the potential consequences.⁸

Applicant has been actively participating in Alcoholics Anonymous (AA) since her 2009 DUI arrest. Her sponsor, “a recovering alcoholic with 17 years of sobriety,” writes:

I have come to know [Applicant] over the past two years through her involvement in AA. She started attending this weekly group meeting in August of 2009 when she picked up a White Chip, (the universal sign of surrender) and hasn't looked back since. She has actively participated in our group and has steadily increased her involvement and level of commitment over the past two years. . . . [Applicant] has shown great resolve . . . and is actively involved in working the 12 Step Program.⁹

The Medical Director for the intensive treatment program that Applicant voluntarily attended states that “[b]ased on [Applicant’s] participating in group, optimistic attitude and her commitment to sobriety her prognosis is very positive.”¹⁰

Applicant considers herself an alcoholic and does not allow others to define her disease or downplay her issues with alcohol.¹¹ She recognizes that she cannot even have one drink of wine, because “the first one opens up the gate, for me to want more.”¹² She has not consumed alcohol since her 2009 DUI arrest.¹³ At hearing, Applicant explained her conscious decision not to use alcohol again as follows:

[W]hen I first started going to AA meetings . . . there was a gentleman in the meetings. He has just celebrated 19 years of sobriety. . . . And he would always say, if you think taking a drink is a good idea, play the whole tape. Play the tape, when you are having fun, and where you ended up. And . . . I will be in situations, if I'm in a restaurant [and] people are having a drink, or if I'm going to an outing, and people are going to have a beer, I might look at them and I'm thinking, don't worry, I play the whole tape, I play the tape. Because I have ended up in a place where I didn't want to be. And no drink could taste that good to me. It is not worth it to me.¹⁴

⁸ Tr. at 41-43.

⁹ GE 4 at 93.

¹⁰ GE 3 at 119.

¹¹ Tr. at 38-40, 48-52.

¹² Tr. at 51.

¹³ Tr. at 32.

¹⁴ Tr. at 51.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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. "In analyzing cases before them, judges must be guided by common sense and with a view toward making a reasoned determination consistent with the interests of national security."¹⁵

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." Directive ¶ E3.1.15.¹⁶ An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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

Analysis

¹⁵ ISCR Case No. 11-03452 at 5 (App. Bd. June 6, 2012).

¹⁶ ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

Guideline G, Alcohol Consumption

The concern regarding excessive alcohol consumption is articulated at AG ¶ 21:

Excessive alcohol consumption 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.

Applicant's past alcohol use and two DUIs raises this concern. It also triggers application of the following disqualifying conditions under 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

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

AG ¶ 23 sets forth a number of conditions that could mitigate the excessive alcohol consumption concern:

(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;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant last consumed alcohol nearly three years ago. She successfully completed an intensive alcohol-treatment program and, based upon her level of participation and positive attitude, received a favorable prognosis. She continues to actively participate in AA, has had no relapses, and established a genuine commitment to her sobriety. Applicant met her high burden of persuasion and demonstrated that her use of alcohol no longer serves as an avenue to question her reliability, trustworthiness, or good judgment. AG ¶¶ 23(a) through 23(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁷ After her second DUI in a five year time span, Applicant recognized that she had a problem with alcohol and voluntarily sought out treatment. Her words and actions demonstrate that she is committed to living an alcohol-free lifestyle. She has properly handled classified information since 1986 without incident and placed her security obligations above her own self-interest when she self-reported the alcohol-related incidents.¹⁸ These whole-person factors, in conjunction with the favorable matters noted above, fully mitigate the alcohol consumption concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline G (Alcohol Consumption)	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

¹⁷ (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.

¹⁸ *Contrast with* ISCR Case No. 11-05079 (App. Bd. June 6, 2012) (Applicant's failure to report own security violation was inconsistent with his security obligations).

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge