



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



In the matter of:)
)
) ISCR Case No. 10-05332
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

04/30/2012

Decision

RIVERA, Juan J., Administrative Judge:

Between 2006 and 2009, Applicant abused alcohol and was convicted twice for driving under the influence (DUI) within a two-year period. In 2009, she was diagnosed with alcohol abuse. Notwithstanding, she presented substantial evidence in mitigation. She has been abstinent since October 2009, complied with all court orders, successfully attended alcohol counseling and therapy, and continues to attend an alcohol aftercare program. She has continued her relationship with her therapist, and became a certified SMART facilitator in her community. Applicant made significant lifestyle changes and the reasons that led to her drinking are no longer present in her life. Her questionable behavior does not cast doubt on her current reliability and judgment. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 1, 2009. On November 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under

Guideline G (Alcohol Consumption).¹ Applicant answered the SOR on December 13, 2011, and requested a hearing before an administrative judge. The case was assigned to me on January 23, 2012.

DOHA issued a notice of hearing on February 8, 2012, convening a hearing for February 29, 2012. At the hearing, the Government offered exhibits (GE) 1 through 5. Applicant testified and submitted exhibits (AE) 1 through 8. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 7, 2012.

Findings of Fact

Applicant admitted the SOR factual allegations, with comments. Her admissions are incorporated into the findings of fact. After a thorough review of all the evidence, and having observed Applicant's demeanor and considered her testimony, I make the following additional findings of fact.

Applicant is a 31-year-old project manager working for a government contractor. She was awarded a bachelor's degree in May 2003. Between 2006 and 2007, she was awarded four master's certificates in the subjects of commercial contract management, government contracting management, information systems/information technology project manager, and applied project management. Applicant married in March 2003, and she was divorced in July 2010. She has been in a stable relationship since August 2009, and she and her fiancé have a 19-month-old daughter.

Applicant has worked with different government contractors since June 1999. She was granted access to classified information at the secret level in about 1999, and a top secret clearance with access to sensitive compartmented information (SCI) in 2007. There is no evidence to show that Applicant has compromised or caused others to compromise classified information. She was hired by her current employer in November 2008. She needs a security clearance to perform her duties. Applicant is considered to be a person of good moral character and a productive and dedicated professional. She has demonstrated the ability to perform well in high demanding jobs with increasing levels of responsibility.

Applicant's security concerns resulted from her alcohol abuse. She started consuming alcoholic beverages in 1998, at age 18. Between age 18 and age 25, she consumed alcoholic beverages socially, approximately two beers once every 2 weeks. Between December 2005 and November 2007, Applicant increased her drinking habits because of increased stress and attending work-related social events. During this period, she drank to intoxication once per week at social events with friends and family.

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

In November 2007, Applicant visited a bar with friends, consumed approximately four beers, and attempted to drive home. She was stopped by a police officer for driving erratically, charged with driving under the influence of alcohol (DUI), and held overnight in jail. Shortly after her arrest, Applicant notified her employer and facility security officer of her predicament. In February 2008, Applicant pled guilty to her first DUI offense. She was sentenced, in part, to 60 days in jail, suspended upon good behavior for a period of three years. She also was ordered to attend Alcohol Safety Awareness Program (ASAP), which she completed in July 2008. Additionally, her driver's license was suspended for one year, and she paid fines and other court charges.

In February 2009, Applicant was informed that the Department of Motor Vehicles (DMV) was notified that she completed ASAP. She was told that she could go to the DMV to reinstate her driver's license. Applicant elected to drive using a copy of her suspended driver's license. In March 2009, she was charged with speeding and driving on a suspended driver's license. She pled guilty to both charges, and in June 2009, she paid fines of \$175 for driving with a suspended driver's license, and \$75 for speeding. She also was sentenced to three-day loss of license.

In February 2009, Applicant started binge drinking. She was consuming more alcohol than she intended to consume at least once a week. On October 2009, Applicant went to a concert with a friend and consumed approximately four beers. After the concert, she went to a bar and consumed another beer and a shot of an alcoholic beverage. She drove her car after consuming alcoholic beverages. She was stopped for texting while driving, and a subsequent breathalyzer determined she had a blood alcohol content of .15 percent. Applicant was charged with driving while intoxicated (DWI), second offense within two years. Shortly after her arrest, Applicant notified her employer and facility security officer of her predicament.

In February 2010, Applicant pled guilty to the DWI charge. She was sentenced, in part, to 180 days in jail, 140 suspended, with a mandatory service of 20 days jail. Additionally, she was fined \$716, ordered to attend ASAP, and her driver's license was suspended for six months, and restricted for three years.

Applicant also was required to undergo an alcohol evaluation. She was diagnosed with alcohol abuse and required to attend 24 group therapy sessions. She successfully completed her therapy sessions. Applicant found her therapy sessions so useful that she has continued her relationship with the therapist beyond the court-mandated period. Concurrent with her ASAP education, Applicant participated in aftercare treatment with SMART Recovery. She also found the SMART program helpful and she volunteered to become a SMART facilitator in her community. With the encouragement of her therapist, Applicant completed the required Facilitator Distance Training Program. She is poised to start working as a SMART facilitator in the near future. Applicant is currently in compliance with the terms of her probation. Her probation will end in February 2013.

Applicant attributed her alcohol abuse to the stress and the instability in her life that resulted from her marital difficulties and her changing jobs. Applicant readily admitted that her decisions to drink and drive were irresponsible and careless. Notwithstanding, Applicant has made significant strides to stabilize her life. She finalized her divorce; maintained the confidence of her employer, co-workers, and clients; was assigned to positions of greater responsibility, and she is in a stable relationship with the father of her daughter. Applicant is maintaining a healthy life balance and creating the right environment for her daughter.

Applicant went through a very difficult and stressful period with the death of her fiancé's mother, and the stillbirth of her second child in November 2011. She was able to overcome these events with the knowledge and skills she acquired from her therapy sessions and her participation in SMART. She believes that with her new acquired skills it is unlikely that she will abuse alcohol in the future. She intends to resume her alcohol consumption in 2013, after her court-ordered alcohol abstinence and probation periods end. (Tr. 33) She is confident that with her new acquired abilities, and the support of her family, she will be able to make smart and appropriate choices not only with respect to her alcohol consumption, but also in her personal life.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline G, Alcohol Consumption

Under Guideline G the Government’s concern is that 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. AG ¶ 21.

The Government established its case under Guideline G by showing that Applicant has consumed alcohol, at times to excess, from around 1998 until 2009. She was convicted of two serious alcohol-related offenses within a two-year period, a DUI in 2007 and a DWI in 2009. Her 2009 DWI occurred while Applicant was still under probation for the first DUI. Applicant exercised questionable judgment by driving after consuming alcohol. She was diagnosed with alcohol abuse in 2009. She intends to resume her alcohol consumption in 2013, after her court-ordered alcohol abstinence and probation periods end.

Disqualifying conditions AG ¶ 22(a): “alcohol-related incidents away from work, such as driving while under the influence, . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;” AG ¶ 22(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;” and AG ¶ 22(d): “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” apply.

There are three Alcohol Consumption Mitigating Conditions under AG ¶ 23 potentially applicable to these disqualifying conditions:

- (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); 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.

AG ¶¶ 23(a), 23(b), and 23(d) apply. Applicant presented substantial evidence in mitigation. Her last alcohol-related incident occurred in October 2009, approximately two and one-half years ago. She has been abstinent since October 2009. She complied with all the court's orders, including, attending ASAP, undergoing therapy and counseling, and regularly attending an alcohol aftercare program. Moreover, she demonstrated her strong commitment to her rehabilitation by continuing her relationship with her therapist beyond the court-mandated term, and by becoming a certified SMART facilitator in her community.

Applicant also made significant lifestyle changes that greatly assisted her in the rehabilitation process. She finalized her divorce putting an end to a difficult relationship, and to the main reason for the stress that led to her drinking. She is currently in a stable relationship with the father of her 19-month-old daughter. She is pursuing a balanced, healthy lifestyle to provide a better environment to her daughter, which is her first priority. Applicant also has a stable work environment where she is excelling and earning additional responsibilities. Applicant promptly disclosed to her employer and facility security officer both alcohol-related incidents.

I considered that Applicant's probation period does not end until February 2013, and that she has expressed her intent to resume her alcohol consumption after the court-mandated period of abstinence and her probation end. However, in November 2011, Applicant went through a stressful and difficult period with the loss of her fiancé's mother and the stillbirth of her son. It appears that her strong rehabilitative efforts, newly acquired skills, and family-support system allowed her to weather these circumstances without a relapse. I believe that those same skills and her family-support system will make it unlikely for Applicant to resume her alcohol abuse. Moreover, she is clearly on notice about the behavior she is required to maintain to remain eligible for a security clearance. Considering the record as a whole, I find that Applicant mitigated the Guideline G security concerns, and that she will be able to drink responsibly. AG ¶ 23(c) does not apply because she relapsed after participating in ASAP.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c)) Applicant abused alcohol and was convicted twice for DUI within a two year period. In 2009, she was diagnosed with alcohol abuse.

Notwithstanding, Applicant presented substantial evidence in mitigation. She has been abstinent since October 2009, complied with all court orders, successfully attended alcohol counseling and therapy, and continues to attend an alcohol aftercare program. Moreover, she has continued her relationship with her therapist, and became a certified SMART facilitator in her community. Applicant made significant lifestyle changes and the reasons that led to her drinking are no longer present in her life. Her questionable behavior is unlikely to recur, and it does not cast doubt on Applicant's current reliability and judgment.

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 – 1d:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge