



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



In the matter of:)
)
) ISCR Case No. 10-05563
)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: Kevin E. Byrnes, Esq.

06/28/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant has made tremendous strides in overcoming her addiction to alcohol and narcotics. However, she relapsed less than a year ago. Consequently, it is too soon to conclude that she has mitigated the security concerns. Clearance is denied.

Statement of the Case

On July 11, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, alcohol consumption, H, drug involvement, and I, psychological conditions. 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).

Applicant answered the SOR on September 12, 2012 and requested a hearing. Also, she admitted subparagraphs 1.c, 2.b, 2.f, 3.b, and 3.d, admitted, in part, and denied, in part, subparagraphs 1.a, 1.b, 2.a, 2.c, 2.d, 3.c, 3.d, 3.e, and 3.f. She denied subparagraphs 1.d, 2.e, and 3.a.

On December 4, 2012, Department Counsel amended the SOR, revising subparagraphs 1.a through 1.d, 2.a through 2.f, and 3.a through 3.f. Also, Department Counsel amended the SOR by adding subparagraphs 1.e, 1.f, and 2.g. On February 28, 2013, Applicant responded. She did not object to the amendments, and she admitted all of the allegations in the amended SOR except subparagraph 1.c.

The case was assigned to me on March 21, 2013. On April 10, 2013, I scheduled a hearing for May 13, 2013. At the hearing, I received 19 Government exhibits marked as Government Exhibits (GE) 1 through 19, and three Applicant exhibits marked as Applicant Exhibits (AE) A through C. Also, I received the testimony of Applicant and two character witnesses. At the close of the hearing, I left the record open to allow Applicant to submit additional exhibits. Within the time allotted, she submitted five additional exhibits marked and admitted as AE D through H. The transcript was received on May 21, 2013.

Findings of Fact

Applicant is a 51-year-old single woman. She was married previously from 1994 to 1996. The marriage ended in divorce. She earned a college degree in 2002 and a law degree in 2007. Since January 2008, she has been working for a government contractor as a law clerk.

Applicant had an extraordinarily troubled childhood. She was physically abused by her father, and sexually abused by her stepfather, a babysitter, and her grandfather. (GE 5 at 1-4; Tr. 46) By age 12, she was running away from home and abusing illegal drugs, including marijuana, hashish, and purple microdot. By age 13, she began drinking alcohol.

By her mid-teens, Applicant began to realize she had a problem with drug and alcohol use. Consequently, she reduced her usage, and began focusing on earning her GED.(GE 5 at 10) These efforts were successful, as she earned her GED by her late teens.

By age 21, Applicant had relapsed. Her alcohol abuse worsened, and her illegal drug use expanded to include cocaine, which she used almost daily. (GE 5 at 13) In 1993, Applicant sought professional help for her drug and alcohol problems. (GE 5 at 15) She attended group therapy and Alcoholic's Anonymous (AA). With the help of this professional support, she quit using drugs and alcohol.

Applicant relapsed nine months later, and began drinking alcohol every day. (GE 5 at 13) She drank between three and ten beers per day. (GE 14 at 4) Eventually, she began using cocaine again.

In 1997, Applicant began treatment with a psychologist “to hone in on certain emotional issues.” (GE 4 at 4) Between 1997 and 1998, she received counseling every two weeks. At some point during this period, a psychiatrist prescribed her anti-depressant medications. (GE 19 at 5)

In August 1999, Applicant’s psychologist referred her to an inpatient detoxification clinic. While enrolled in the clinic, Applicant was diagnosed with alcohol dependence, cocaine dependence, substance-induced mood disorder, and borderline personality disorder. (Amended Answer at 1-3; GE 19 at 4) While enrolled, she received individual and group therapy. After successfully completing the program, she was discharged. She continued weekly counseling sessions, and AA attendance. (GE 4 at 5)

Applicant was clean and sober for the next ten years, continuing to attend counseling and AA. (GE 4 at 5) During this time, she graduated from college and law school. (Tr. 40) Also, she continued to receive treatment for her mental health problems. In 2005, she was evaluated on multiple occasions and diagnosed with mood disorder, depressive disorder, and anxiety disorder. (GE 5 at 22-70) Nevertheless, her symptoms were controlled effectively with medication. (Tr. 33)

After graduating from law school in 2007, Applicant relocated and took her current job. She had difficulty finding a compatible AA group and her attendance lapsed while she was trying to locate one. Erratic AA attendance, together with the stress of trying to pass the bar exam, prompted Applicant to begin drinking alcohol and using cocaine again. (Tr. 41; GE 17 at 78)

In August 2009, Applicant again entered a detoxification program. (GE 5 at 20; 14 at 20; Amended Answer at 1) She was diagnosed with acute chronic alcoholism. After completing this detoxification program, she underwent intensive outpatient care, followed by counseling. (GE 5 at 20) After a period of abstinence from alcohol following the completion of a rehabilitation program, Applicant had another relapse.

In December 2010, Applicant entered an inpatient substance abuse clinic where she was diagnosed with alcohol and cocaine dependence, continuous. (Amended Answer at 1) After being discharged from the clinic, Applicant attended weekly group therapy sessions. She remained abstinent from drugs for 18 months before relapsing in June 2012. (Amended Answer at 2). She entered treatment again in August 2012, attempted to abstain, and relapsed again, using cocaine and alcohol in October 2012. (Tr. 35; AE A at 1)

Later in October 2012, Applicant entered another substance abuse clinic. (Tr. 32) She successfully completed it, and has been clean and sober since then. Per her psychiatrist’s advice, she began seeing a therapist who specifically deals with the

relationship of substance abuse issues to past physical and sexual abuse. (Tr. 34) Also, she is working more closely with her AA sponsor to ensure that she does not have another relapse. (Tr. 63) According to Applicant's psychiatrist, her substance abuse and addiction are in full remission. (AE A at 2)

In January 2013, Applicant began working with a support group for lawyers with substance abuse problems. She was assigned a monitor who testified. According to the monitor, Applicant entered into a treatment contract with the support group whereupon she agreed to submit to random drug testing, stay compliant with her medications, and attend daily support group meetings for three months. (Tr. 56) The monitor characterized Applicant's participation as "more than compliant" (Tr. 57)

Currently, Applicant is taking a mood stabilizer and several anti-depressants to treat her mental illness. (Tr. 33) According to her psychiatrist, "her medication regimen is working and [Applicant] is careful to take her meds as directed and keeps her psychiatry appointments." (AE A at 2) Also, her psychiatrist noted that Applicant's "bipolar symptoms will certainly improve and perhaps become nonexistent with her recovery program if she is able to continue to maintain her excellent sober program." (AE A at 2)

According to Applicant's supervisor, she meets or exceeds all of the company's expectations, and is "an individual of integrity, [and] a diligent and hardworking employee." (AE E) On May 28, 2013, Applicant executed an affidavit certifying that she will never abuse illegal drugs in the future. (AE D)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 to obtain a security clearance.

Analysis

Guideline G, Alcohol Consumption

Under this guideline, “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) Applicant’s 30-year struggle with alcohol dependence triggers the application of 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; AG ¶ 22(d), “diagnosis by a duly qualified medical professional . . . of alcohol abuse or alcohol dependence,” and AG ¶ 22(f), “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.”

The following mitigating conditions under AG ¶ 23 are potentially applicable:

(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 . . . 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 readily acknowledges her alcohol problem. She is in counseling, attends AA regularly, and has voluntarily admitted herself into rehabilitation facilities over the years when she could feel her problem slipping out of control. She has, on average, consumed less alcohol over the past ten years than she had consumed previously. Her current psychiatrist states that her mixed substance abuse problem is in remission.

Conversely, Applicant has relapsed multiple times; most recently after she answered the SOR. Consequently, elements of AG ¶¶ (b) and (d) apply, but neither apply totally. Moreover, given the recency of the latest relapse, it is too soon to conclude that Applicant has mitigated the alcohol consumption security concern.

Guideline H, Drug Involvement

Under this guideline, “use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness

to comply with laws, rules, and regulations.” (AG ¶ 24) Applicant periodically abused illegal drugs for nearly 40 years. In 1999, she was diagnosed with cocaine dependence. AG ¶¶ 25(a), “any drug abuse,” 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and 25(d), “diagnosis by a duly qualified medical professional . . . of drug abuse or drug dependence,” apply.

As is the case with Applicant’s alcohol dependence, she has made earnest efforts over the years to address her drug problem, undergoing treatment and attending counseling. There is no record evidence that she has ever failed to complete a drug treatment program as prescribed by her physician. Consequently, AG ¶ 25(f), “failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional,” does not apply.

Any positive inference generated by her completion of drug treatment programs is undercut by her multiple relapses, most recently in October 2012. Under these circumstances, the only applicable mitigating condition is AG ¶ 26(b)(4), “a signed statement of intent with automatic revocation of clearance for any violation.” Although I do not doubt Applicant’s sincerity, it is too soon to conclude that she has mitigated the drug involvement security concern.

Psychological Conditions

Under this guideline, “certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness.” (AG ¶ 27) Applicant has a history of mental illness. Over the years, psychiatrists have diagnosed her with several conditions including anxiety disorder, post-traumatic stress disorder, depression, and substance-induced mood disorder. These ailments could conceivably impair judgment, reliability, or trustworthiness. 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,” applies.

Applicant has always been compliant with her psychiatric treatment regime, and it has been successfully controlled with medication. Moreover, despite her mental illness, she was able to finish college, earn a law degree, and perform well on the job. She continues to receive treatment and her psychiatrist stated in a recent evaluation that it is working. The following mitigating conditions under AG ¶ 29 apply:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a 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; and

(e) there is no indication of a current problem.

Despite the application of these mitigating conditions, I cannot conclude that Applicant has mitigated the psychological conditions security concern. According to one of the psychiatrists with whom she has treated over the years, her mood disorder is substance induced. Because all of her problems are interrelated, the recency of her latest relapse casts doubt not only upon the issue of whether or her substance abuse will recur; it casts doubt on her long-term psychological stability, as well.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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.

Applicant did not experience childhood; she survived it, enduring physical abuse, sexual assaults, and family dislocation. Her tragic childhood led to her psychological problems and substance addictions.

Applicant's journey from teenage runaway and substance abuse addict, to law school graduate and respected employee of a federal government contractor is an extraordinary story. Unfortunately, it is too early to ascertain whether her story will have a successful conclusion sufficient for me to conclude that she is no longer a security risk because she relapsed less than ten months ago, after answering the SOR.

As Applicant has done in the past, she has refocused her attention on sobriety, re-admitting herself into substance abuse treatment, and joining a support group for lawyers with substance abuse problems. Given the recency of the latest relapse, however, it is too soon to conclude that she has mitigated the 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.g:	Against Applicant
Paragraph 3, Guideline I:	AGAINST APPLICANT
Subparagraphs 3.a-3.f:	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 a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge