



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



In the matter of:)
)
) ISCR Case No. 10-06799
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

06/20/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant was diagnosed with alcohol abuse and alcohol dependence. Since 2007, she participated in five chemical dependence treatment programs, and she relapsed after each treatment. Her most recent relapse occurred in April 2012. Applicant is receiving psychiatric treatment and medication for her depression, and she is doing better. Notwithstanding, it is too soon for Applicant to establish that she can control her alcoholism and depression. She failed to mitigate the Guideline G and E security concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 28, 2010. On January 6, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline G (Alcohol Consumption). The SOR was amended on February 15, 2012, adding two allegations under Guideline G, and two allegations under Guideline E (Personal

Conduct).¹ Applicant answered the SOR and the amended SOR on January 28, 2012 and March 21, 2012, respectively, and she requested a hearing before an administrative judge. The case was assigned to me on April 3, 2012.

DOHA issued a notice of hearing on April 20, 2012, convening a hearing for May 8, 2012. At the hearing, the Government offered exhibits (GE) 1 through 6. Applicant testified and submitted exhibits (AE) 1 through 4. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 14, 2012.

Procedural Issue

On February 15, 2012, the Government moved to amend the SOR by adding subparagraphs 1. e and 1.f to SOR ¶ 1 (Alcohol Consumption), and by adding SOR ¶¶ 2.a and 2.b (Personal Conduct). Appellant answered the amended SOR allegations on March 21, 2012. I granted the amendment as requested.

Findings of Fact

Applicant admitted the six factual allegations under SOR ¶ 1. She denied the two allegations under SOR ¶ 2. Her admissions are incorporated as findings of fact. After a thorough review of the evidence, and having observed Applicant's demeanor and considered her testimony, I make the following additional findings of fact.

Applicant is a 37-year-old senior analyst working for a Government contractor. She was awarded a bachelor's degree in mechanical engineering in 2000. She married her spouse in 2000, they separated in June 2007, and their divorce became final in 2009. She has a daughter, age nine, and a son, age seven, of this marriage.

Appellant worked for another Government agency from 2000 until 2003. She was granted a secret security clearance in 2001, which she possessed until 2007. She worked for a Government contractor from 2003 until 2007, and her security clearance was continued during that period. In 2007, she stopped working for the Government contractor, and her clearance was terminated. She submitted the current SCA in January 2010, along with her employment application. She was hired by her current employer, a Government contractor, in November 2010, and she was granted an interim secret clearance which she still holds. There is no evidence to show she has compromised or caused others to compromise classified information.

At her hearing, Applicant submitted numerous character statements from supervisors, clients, coworkers, and friends. Applicant has been providing consulting services to a sensitive Government agency. She is considered to be an extremely hard

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.

working employee. She has demonstrated a pattern of integrity, loyalty, trustworthiness, and reliability. She is described as a dedicated professional and a tremendous asset to her employer. Her attention to detail and solid analytical abilities make her extremely valuable in a project management environment. She is also a very dedicated mother and has a good relationship with her children.

In her January 2010 SCA, Applicant disclosed that she is an alcoholic, that she attended several alcohol treatment programs since 2007, and that she had emotional and psychological problems as a result of a violently abusive marriage.

Applicant was raised by her mother, who continues to be an opiate drug addict. Her father was an alcoholic (currently two years sober), and she never saw too much of him around the household. His older sister served time in jail for possession of illegal substances. Applicant started consuming alcoholic beverages at age 12. She did not finish high school, left home, and used illegal drugs (cocaine, crack, and crank) between age 15 and 19. At age 18-19, she illegally used cocaine, crack, and crank almost every day. She stopped using drugs at age 20, because of a drug-related incident that almost killed her.

Applicant attended college between 1996 and 2000, where she did well. While in college, she did not use drugs or abuse alcohol. Applicant met her ex-husband while in college, and they were married in 2000. During the course of their relationship and marriage, she was seriously abused physically and mentally. In October 2006, Applicant started abusing alcohol to cope with her marital abuse and depression. She attended a 30-day inpatient alcohol treatment in April 2007. After her relapse, she attended a second chemical treatment program from August 2007 until September 2007. She was not able to remain clean and sober, and she was admitted into the residential level care program. In September 2007, she reentered the day care program, but she left the treatment program against medical advice on September 22, 2007. She was diagnosed with alcoholism (middle to late stage) and depression.

From October 18, 2007 until November 21, 2007, Applicant attended another chemical treatment program. She was diagnosed with alcohol dependence; major depressive disorder, recurrent and severe; dysthymic disorder; generalized anxiety disorder; and an eating disorder. She attended a 40-day inpatient and outpatient alcohol treatment program, which included participation in Alcoholics Anonymous (AA) and women's group counseling. Her relapse potential was listed as high.

Applicant stated that from December 2007 until May 2009, she did not consume alcohol beyond an occasional relapse. She did not recall the dates or the number of relapses, but during the relapses she would consume between half to a full bottle of hard liquor. In May 2009, she relapsed and drove while under the influence of alcohol (DUI). She was convicted of that offense in August 2009.

Applicant claimed she did not consume alcohol between May 2009 and April 2011. In 2010, Applicant started seeing a licensed clinical social worker, but stopped

her treatment because of the lengthy commute required to attend the counseling. She was diagnosed with alcohol abuse/addiction. She continued attending AA meetings. In April 2011, Applicant's ex-husband filed for sole custody of the children. Applicant was so upset that, notwithstanding the children were with her, she consumed half a bottle of hard liquor and passed out. Her children called the police and she was found unconscious on her bed. She was hospitalized for approximately two days.

Applicant averred she has been attending AA meetings since December 2007. After her April 2011 alcohol-related incident, Applicant started attending AA meetings every day. In May 2011, Applicant again was upset and depressed, and consumed alcohol until intoxication. One of her neighbors called the police. She was hospitalized for one day and released. Applicant continued drinking until July 2011, when she started a new treatment for alcoholism and emotional concerns with a licensed clinical psychologist. According to her psychologist, as of November 2011, Applicant exhibited sobriety and improved functioning. She recommended continued weekly sessions. (AE 2) Applicant relapsed in November 2011.

In April 2012, Applicant was served with a family court order restricting her ability to visit with her children. The court order requires Applicant to remain sober for 12 months, submit to random urinalysis tests every month, and to submit to breathalyzer tests before she is allowed to see her kids for a period of three hours twice a week. If she does not comply with the terms of the court order, she only can have supervised visits with her children. After one year of compliance with the court order, Applicant will be allowed more visits with her children.

In April 2012, Applicant started psychiatric treatment for chronic depression. She was prescribed an anti-depressant, and she believes it is making a big difference in the way she feels. She believes that she finally has found something to help her stop consuming alcohol. Notwithstanding, she relapsed in April 2012, because of the stress caused by the family court proceedings, her work, her depression, and her involvement in a car accident that totaled her car. After the accident, Applicant drank a liter of hard alcohol a day for two days.

Applicant is extremely remorseful about her alcohol-related behavior. She was candid and forthcoming at her hearing. She is aware that she is suffering from a serious disease, and she seems to be doing all that she can to remain sober and control her alcohol dependence. Her strong desire to remain sober is motivated by her desire to visit with her children. Applicant believes she now has in place all the mechanisms she needs to help her to remain sober.

Applicant understands the behavior she is required to maintain to visit with her children. She also is aware that she has to establish her sobriety to be eligible for a security clearance. She noted that she has a long history of good performance. She considers herself to be of good character, trustworthy, and a dedicated professional.

On July 5 and 18, 2011, Applicant provided detailed sworn statements about her past behavior. In the July 5, 2011 statement, she stated: "I have never illegally used any controlled substances." Applicant's statement is contrary to the drug history she provided during medical assessments and interviews for prior alcohol treatment. It is also contrary to her testimony where she stated that she did not finish high school, left home, and illegally used cocaine, crack, and crank almost every day between age 15 and 19. She stopped using illegal drugs at age 20, because she developed suicidal ideations and almost killed herself.

Additionally, in the July 5, 2011 sworn statement, Applicant stated that she had not "seen any doctors or therapists for treatment or counseling for alcoholism since December 2007." Applicant's statement is contrary to her medical records and her hearing testimony, which indicates that in 2010, she sought counseling with a licensed social worker.

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, frequently to excess, from age 12 to present. Her alcohol abuse increased substantially from late 2006 to present. She was convicted of DUI in 2009, and she was involved in two serious alcohol-related incidents in April and May 2011, that required her hospitalization. Between 2007 and 2012, Applicant participated in five chemical dependence treatment programs. She was diagnosed with alcohol abuse and alcohol dependence in 2007, 2009, and 2010. She relapsed after every treatment program. Her most recent relapse was in April 2012.

The following alcohol consumption disqualifying conditions under AG ¶ 22 apply:

- (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;
- (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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (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; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

There are four 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);

(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.

None of the mitigating conditions apply. Applicant's questionable alcohol-related behavior is recent and happened frequently. I considered Applicant's upbringing, her abusive marital relationship, her acrimonious divorce, and that she suffers from clinical depression. Some of those factors could be considered as unusual circumstances that contributed to her alcohol abuse and dependency. However, she has not overcome her depression, she continues to relapse frequently, and her alcohol consumption could also be triggered by routine stressful situations.

Applicant acknowledged her alcoholism, and she has been making a strong effort to remain sober. She participated in five chemical dependence treatment programs, and she relapsed after every treatment program. She was diagnosed with alcohol abuse and alcohol dependence in 2007, 2009, and 2010. Her most recent relapse was in April 2012. Her evidence is insufficient to establish a pattern of abstinence. Additionally, she presented no clear unequivocal documentary evidence of a recent favorable prognosis from a duly qualified medical professional.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, 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.

In her July 5, 2011 sworn statement, Applicant made false statements when she stated: (1) "I have never illegally used any controlled substances," and (2) "I have not seen any doctors or therapists for treatment or counseling for alcoholism since December 2007." Applicant's statements are contrary to her medical and alcohol treatment records and contrary to her testimony. She previously stated that she did not finish high school, left home, and illegally used cocaine, crack, and crank almost every day between age 15 and 19. She also used marijuana infrequently. Her medical records and her hearing testimony indicate that in 2010, she sought counseling with a licensed social worker.

Applicant's false statements trigger the applicability of the following disqualifying conditions under AG ¶ 16:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and
- (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 claimed she discussed her past use of illegal drugs with the Government investigator and that she has been candid and forthcoming during the security clearance process. Her testimony is not credible.

Considering the record as a whole, I find that none of the Guideline E mitigating conditions apply. AG ¶ 17(a) does not apply because she did not correct her falsification before she was confronted with the facts. AG ¶¶ 17(b), (f), and (g) are not raised by the

facts of this case and are not applicable. AG ¶ 17(c) does not apply because making a false statement is a felony in violation of 18 U.S.C. § 1001.

AG ¶¶ 17(d) and (e) are partially applicable, but do not fully mitigate the security concerns. Applicant has acknowledged her questionable behavior and she has taken significant steps to alleviate the stressors and circumstances that caused her untrustworthy and unreliable behavior (AG ¶ 17(d)). She also has taken some steps to reduce or eliminate her vulnerability to exploitation, manipulation, and duress (AG ¶ 17(e)). Notwithstanding, she has not overcome her depression, she continues to relapse frequently, and her alcohol consumption could also be triggered by routine stressful situations.

Applicant's continued alcoholism and her false statements show lack of judgment, lack of candor, dishonesty, and an unwillingness or inability to comply with rules and regulations. Her questionable behavior raises questions about her reliability, trustworthiness, and ability to protect classified information.

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 is a dedicated mother with a strong relationship with her children. She is considered to be an outstanding employee and made significant contributions to her employer. She is dedicated, diligent, and displays excellent professional knowledge and abilities. She is working very hard to overcome her alcoholism and to control her depression.

Notwithstanding, Applicant is an alcoholic. She abused alcohol to cope with her marital abuse and severe clinical depression. She has been repeatedly diagnosed with alcohol abuse and alcohol dependence. Since 2007, she has participated in five chemical dependence treatment programs and she relapsed after each treatment. Her most recent relapse occurred in April 2012. Applicant is receiving psychiatric treatment and medication for her depression and seems to be doing better. Considering the record evidence as a whole, I find it is too soon for Applicant to establish that she can control her alcoholism and depression. She failed to mitigate the Guidelines G and E 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 E:

AGAINST APPLICANT

Subparagraphs 2.a - 2.b:

Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge