



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-08098

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

02/29/2012

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate the security concerns regarding her alcohol consumption. Eligibility for access to classified information is denied.

Statement of the Case

On November 9, 2011, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on December 2, 2011, and requested a hearing. The case was assigned to me on January 11, 2012. The case was scheduled for hearing

on January 26, 2012. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of six exhibits (GEs 1 through 6); Applicant relied on one witness (herself) and five exhibits (AE A through E). The transcript (Tr.) was received on February 2, 2012.

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) consumed alcohol, at times to excess, from approximately 1998 to at least June 2011; (b) was arrested in about May 1998 for fraudulent use of a birth certificate/driver's license, and driving under the influence (DUI) alcohol 0.08 or more, to which she pleaded guilty and was fined; (c) was arrested in March 2004 for DUI and DUI alcohol 0.08 or more, to which she pleaded guilty to DUI and was sentenced to perform two days of community service, attend a three-day DUI program, fined \$1,700, had her driver's license suspended/restricted for three months, and was placed on probation for five years; (d) was arrested in March 2009 and charged with DUI and DUI 0.08 or more with a prior, to which she pleaded guilty to DUI 0.08 or more and was sentenced to complete a multiple conviction alcohol program for 18 months, fined \$2,418, ordered to complete four days of community service, had her driver's license suspended for one year, and was placed on probation for one year; (e) was detained by police in July 2009 after she was found outside a bar drunk in public, and was taken to a police station and held in a drunk tank before being released with no charges filed against her; and (f) continued to consume alcohol to at least June 2011 despite her alcohol-related incidents and court-ordered enrollment in an 18-month alcohol program.

In her response to the SOR, Applicant admitted all of the allegations with explanations. She claimed she understood the results of her mistakes which she has worked hard to correct and change.

Findings of Fact

Applicant is a 32-year-old management assistant for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant enlisted in the Navy in December 1998 after completing one year of college. She served four years of active duty and was honorably discharged in August 2002. (GE 1; Tr. 52) While in the Navy, she held a secret security clearance. (GE 4)

Following her Navy discharge, Applicant returned to college. She married in March 2003 and accompanied her husband to another part of the state where he was stationed. While relocated with her husband, she attended local colleges. She has no

children from her marriage and divorced her husband in June 2005. (GE 1) Following her divorce, she relocated to her present place of residence and enrolled in an accredited local university. (Tr. 44-45) She earned a bachelors degree from this university in May 2008. (GE 1; Tr. 45)

Applicant joined her current employer in 1998 and currently serves as an assistant to the vice president of her development group. (GE 1; Tr. 26) She has since taken legal steps to restore her maiden name. (AE E)

Before enlisting in the Navy, Applicant consumed alcohol on a regular basis, sometimes to the point of intoxication. (Tr. 49-50) While in the Navy (between 1998 and 2002), Applicant consumed alcohol on the weekends. (GE 2) She became intoxicated if she had two or three glasses of wine or three or four beers. Following her discharge from the Navy in 2002, Appellant enrolled in college, married, purchased a home, achieved debt-free status, and generally avoided heavy drinking and alcohol-related arrests.

Applicant's arrest history

Public records document multiple Applicant arrests (three in all) and a detention for alcohol-related incidents between May 1998 and July 2009. In May 1998 (before her Navy enlistment), Applicant was arrested and charged with fraudulent use of a birth certificate/driver's license and DUI. (GEs 2, 3, and 6) She was attending college at the time and used a fake driver's license to obtain drinks in the bar she was attending with college friends. (Tr. 50-51) She pleaded guilty to a charge of reckless driving, and was fined. (GEs 2, 3, and 6) This incident was alcohol-related despite Applicant's plea to a lesser charge.

Police and court records document Applicant's being arrested in March 2004 and charged with DUI and DUI alcohol 0.08 or more, to which she pleaded guilty to DUI and was sentenced to perform two days of community service, attend a three-day DUI program, fined \$1,700, had her driver's license suspended/restricted for three months, and was placed on probation for five years. (GEs 2, 3, 4, and 6; Tr. 52-53) Applicant is credited with completing the court's imposed probation conditions.

Prior to her March 2004 DUI arrest, Applicant had been out with friends one evening and volunteered to drive for one of her friends who was more intoxicated than she was. (Tr. 54-55) While driving, she made an illegal U-turn and was pulled over by police. (Tr. 56) After being administered a series of sobriety tests, she was arrested and her car was impounded. She was then transported to a local police station where she was administered a breathalyser test. On this test she recorded a .17 % blood alcohol content (BAC). (Tr. 56-57) Applicant completed her court-ordered requirements and paid her assessed fine.

In March 2009, Applicant was arrested and charged with DUI and DUI 0.08 or more with a prior conviction, to which she pleaded guilty to DUI 0.08 or more and was sentenced to complete a multiple conviction alcohol program for 18 months, fined

\$2,418, and ordered to complete four days of community service. (GEs 2, 3, 4, and 6; Tr. 66) The sentencing court also suspended her driver's license for one year and placed her on probation for 10 years (not the five years alleged in the SOR).

Before Applicant's March 2009 alcohol-related incident, she had gathered with friends in a bar and offered to drive her friends home, believing she had paced herself appropriately and was below the legal limit for driving. She acknowledged recording a .17 % BAC in her administered breathalyser test and making a mistake of judgment in not staying with her friends or taking a cab, and she regrets her actions. (Tr. 61)

Applicant documents her attendance of required weekly Alcoholics Anonymous (AA) meetings, spread over a 25-month period spanning November 10, 2009 and January 23, 2012. (AE 5; Tr. 31-33) Due to surgical procedures and work-related conflicts, Applicant missed several months in 2009, over seven months between June 2010 and March 2011, and several months between July 2011 and October 2011. (AE D; Tr. 31-33)

Because of her missed meetings, Applicant still has additional AA meetings to complete before she is eligible to receive a certificate of completion of her court-ordered alcohol program. (*id.*; Tr. 34) She is credited with completing her community service requirements.

In July 2009, Applicant was confronted outside a bar by police who suspected she was intoxicated in public. Police escorted her to a local police station and detained her in at the station for several hours before releasing her without filing any charges against her. Although Applicant characterized her detention as a safety precaution (Tr. 63-64), her detention in a drunk tank at the police station is more consistent with holding her for sobriety assurance reasons. Despite the lack of an arrest or charges, her detention still qualifies as an alcohol-related incident based on the reported details and surrounding circumstances.

Between 2004 and 2009, Applicant experienced a family loss and divorce and consumed alcohol more heavily than she was accustomed to doing. (Tr. 59). She admits to driving while intoxicated on other occasions without being stopped or arrested. (Tr. 58) And she admits to some dependence tendencies in her past without manifest alcohol dependence. (Tr. 63-64)

Applicant continued to drink occasionally in social situations following her March 2009 arrest, but for the past year has maintained her abstinence. (Tr. 70) However, she has never obtained an alcohol diagnosis and prognosis from a licensed medical professional or substance abuse counselor.

Afforded an opportunity to obtain a post-hearing diagnosis and prognosis, Applicant never augmented the record. At this time there are too many unknowns about Applicant's drinking history to draw any reasonable inferences on her condition and ability to safely consume alcohol, even at light to moderate levels.

Endorsements

Applicant is well regarded by her supervisor and colleagues. (AE A; Tr. 27-29) They consider her a superior performer with an outstanding reputation for attitude, organization, efficiency, and reliability. Her supervisor and co-workers praise her for her demonstrated professionalism trustworthiness, and reliability. (*id.*) Her coworkers who have known her and worked with her characterize her as a dependable, reliable, and hardworking professional who plays a critical role in her company's important missions. (*id.*)

During her four years of Naval service, Applicant earned numerous citations honoring her achievements and superior performance. (GE 5 and AE C) Her performance evaluations for 2009 through 2011 consistently characterize her overall performance as exceeding requirements. (*id.*) In her most recent evaluation, her supervisor credited her with being an invaluable asset. (AE B) Cited comments include exceptional attention to detail, ability to remain calm and focused under pressure, organizational skills, and a positive attitude that together produce exceptional results every day. (*id.*)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors:

(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.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Alcohol Consumption

The Concern: 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.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a conscientious and highly dependable management assistant for her defense contractor who presents with a considerable history of alcohol-related incidents over an 11-year period. Principal security issues raised in this case center on Applicant's history of alcohol-related offenses, and the recency of her last alcohol-related conviction in 2009 without the benefit of a diagnosis and completion of the court's probation conditions.

Applicant's recurrent problems with abusive drinking and alcohol-related arrests over an 11-year period raise major concerns over her risk of recurrent alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DC) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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 DC ¶ 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."

While Applicant has never been diagnosed with any known alcohol abuse or dependence, she has attended numerous AA meetings over a two-year period in accordance with the probation requirements imposed on her in connection with her March 2009 DUI conviction. She still has additional AA meetings to complete before she is eligible for certification of completion of the program.

Applicant's AA program offered no identified diagnostic procedures or rehabilitative guidance, and cannot be properly assessed without some documentation of the program's diagnosis assessments (if any) and discrete steps to address them, or an independent diagnosis and prognosis from a licensed medical professional or substance abuse counselor. Applicant has provided neither for consideration. While she denies any alcohol problem, she admits to drinking to intoxication levels sufficient to produce three DUI convictions and police detention in connection with a fourth-alcohol-related incident in July 2009. And she provides no diagnostic insights into her disposition for alcohol at this time.

Because of the absence of any known diagnosis or reliable prognosis to evaluate Applicant's capacity to safely consume alcohol at any level, application of DC ¶ 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence," may not be employed in Applicant's circumstances. Her court-approved AA sessions are not explained or qualified by any records of counseling and treatment by a duly qualified medical professional.

By contrast, were Applicant to be diagnosed with either alcohol abuse or dependence, some recommended abstinence or curtailing of her alcohol consumption could be reasonably expected. Depending on the diagnosis, Applicant's continued

abstinence or drinking at light to abusive levels could be an important consideration in determining what weight to assign to her reformed drinking claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579, at 5 (App. Bd. Apr. 14, 2004). Quite possibly, Applicant could resume her occasional social drinking when her AA conditions are concluded later in 2012. Without any counseling records to evaluate, though, there is no verifiable way to know whether she can safely drink at any level in the future.

Considering Applicant's recurrent arrest history (with four prior alcohol-related offenses) and the limited elapse of time since her last alcohol-related incident DUI in July 2009, limited application of MC ¶ 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," is available to her. Partially applicable to Applicant's circumstances are MC ¶ 23(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 (AA) 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." Still too little is known about her court-approved AA program in 2009, her ability to tolerate alcohol at any level without a diagnosis and prognosis, and how long she is likely to remain on unsupervised probation to warrant safe conclusions that she is not at risk for a recurrent incident.

Faced with similar evidence of limited rehabilitation and a seasoned track record, the Appeal Board has expressed doubts about the ability to make safe, predictive judgments about an applicant's ability to avoid abusive incidents in the future without jeopardizing the national interest. See ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007); ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007).

Taking into account both Applicant's history of alcohol abuse and incidents away from work and corresponding lack of solid probative evidence of a seasoned track record of abstinence without probation conditions, the applicable guidelines, and a whole-person assessment of her limited consumption of alcohol since her last alcohol-related incident in July 2009, it is still too soon to draw firm conclusions about her commitment to avert recurrent alcohol abuse after she has completed her AA conditions.

Applicant's overall showing that her abusive drinking in the past was situational and that she can be trusted to drink responsibly and avert any recurrent problems with judgment lapses related to alcohol in the future is not sufficient to enable her to meet her mitigation burden. While Applicant's AA participation and limited alcohol consumption over the past two years are encouraging, a whole-person assessment does not support approval of a security clearance at this time.

At this time, Applicant has additional AA meetings to attend to fulfill her probation requirements and faces continued unsupervised court probation. Without a certificate of successful completion of her court-imposed AA meetings, or documentation of a favorable diagnosis and prognosis, it is premature to make safe predictive judgments about her ability to withstand recurrent risks to resume drinking. More time is needed for her to demonstrate that she can avert alcohol-related incidents in the future. While her contributions to the Navy and her civilian employer are impressive and commendable, they are not enough to enable her to surmount recurrent risks of alcohol abuse at this time. Unfavorable conclusions are warranted with respect to the allegations covered by the alcohol guideline of the SOR.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparagraphs 1.a through 1.f.: Against Applicant

Conclusions

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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge