



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 10-08144
)	
Applicant for Security Clearance)	

Appearances

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

06/08/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Alcohol Consumption and Drug Involvement concerns, as she has overcome her alcohol and drug addiction. However, she failed to mitigate the Personal Conduct concern, because she falsified her security clearance application by deliberately omitting information about her past alcohol and drug problems. Such deceit casts doubt on her reliability, trustworthiness, and good judgment. Clearance is denied.

Statement of the Case

On March 7, 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), Guideline H (Drug Involvement), and Guideline E (Personal Conduct).¹ On March 22, 2012, Applicant answered the SOR and requested a hearing.

¹ DOHA acted 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 23, 2012. At hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant appeared at the hearing, testified, called her supervisor as a witness, and offered four character letters, including a letter from her counselor. These documents were admitted as Applicant's Exhibits (AE) A through D. The transcript (Tr.) was received on June 5, 2012.

Findings of Fact

Applicant is in her early forties. She is married and has two young children. She has been with her current employer since 2010. Her supervisor, who is a retired U.S. military officer and has held a clearance for nearly 30 years, volunteered to testify on her behalf and recommends her for a clearance. He states that Applicant is reliable, trustworthy, and a self-starter, whose work performance is excellent.²

Applicant started using drugs and alcohol in her teens, around the time her parents divorced. Her use of drugs, primarily marijuana and cocaine, gradually increased to the point that, by 2002, she was using cocaine on a daily basis. She was arrested and charged in 1990 with cocaine possession and, in 1994, with driving while under the influence (she also had illegal drugs and drug paraphernalia in her possession when she was arrested). Applicant estimates that, at its height, her drug habit was costing her about \$400 a week. She abused alcohol to help her sleep and "come down from the cocaine."³

On August 3, 2003, Applicant decided to change her life and went to her mother for help. They found an inpatient drug and alcohol treatment program, but the program would not accept Applicant based solely on her cocaine addiction, so she exaggerated her alcohol use and was accepted. Upon entry into the program, Applicant was diagnosed with alcohol and cocaine dependency. She successfully completed the program and, upon discharge, was diagnosed as cocaine dependent. She received a favorable prognosis, and was advised to abstain from using alcohol and illegal drugs. She then completed an intensive six-week outpatient treatment program.

Applicant then moved to State A and spent the next five months, from September 2003 to January 2004, living at a halfway house for recovering addicts. She participated in a treatment program at the halfway house and successfully completed it.⁴

² Tr. at 24-25, 40-44; GE 1; AE B. *See also* AE A.

³ Tr. at 26-27, 32-33, 39; GE 4, *Summary* at 2-3; GE 5.

⁴ Tr. at 29-30; GE 2 - GE 5.

After leaving the halfway house, Applicant moved back to State B and began therapy with an experienced counselor “to find the root of (her) problems.”⁵ These therapy sessions lasted from 2004 to 2007. The counselor writes:

(Applicant) attended sessions weekly and was dedicated to her progress, growing and maturing steadily. Her self esteem improved a great deal during that time. She terminated treatment when she married and moved (to State C). She has maintained contact with me on occasion, keeping me updated on her progress in work as well as her personal life. (Applicant) demonstrated, at all times, her ability to stay on track in pursuing her goals. I experienced her as someone with integrity and determination to live a quality life. I can, with confidence, recommend that she is qualified to have [a] security clearance.⁶

Applicant has not used any illegal drugs since August 3, 2003. She does not associate with those involved with illegal drugs. She regularly attended Alcoholics Anonymous (AA) meetings from 2003 to 2004. She stopped drinking alcohol altogether for three years following her discharge from the inpatient treatment program and did not drink while pregnant with her two children. She now only drinks on social occasions and on some weekends, but limits her consumption two to three glasses of wine or beer. She does not drink around her children, always has a designated driver when she does drink, and has had no derogatory alcohol-related incidents. Her supervisor has witnessed Applicant drink at social settings and has never seen her drink to excess. He has taken appropriate action in the past when he has witnessed or become aware that a subordinate has an alcohol problem. Applicant is dedicated to her family and job.⁷

Applicant was unemployed from June 2009 to March 2010. She filled out and submitted a security clearance application (SCA) in April 2010 in connection with her new job, with her current employer. Applicant was required to reveal whether she had used any illegal drugs in the past seven years, and whether she had received any counseling or treatment for drug or alcohol issues in the preceding seven years in response to pertinent questions in the SCA. Applicant answered “no” to these questions.⁸ She also did not list her residency at the halfway house in State A from September 2003 to January 2004. Instead, she claimed to have continuously resided, from January 2003 to May 2005, in State B at her rental apartment.⁹ She also did not reveal the alcohol and drug-related charges from 1990 and 1994 in response to relevant

⁵ Tr. at 31.

⁶ AE C.

⁷ Tr. at 23, 30-32, 37-39, 43-44; GE 2 - GE 5

⁸ GE 1 at 45-46.

⁹ GE 1 at 14-15.

questions on the SCA that required disclosure of such information.¹⁰ She signed her SCA, certifying that her responses were “true, complete, and correct to the best of (her) knowledge and belief.”¹¹

Applicant denies that she intentionally omitted any information from her SCA. She claims that, when filling out her SCA, she miscalculated the timeframe she was using illegal drugs and in treatment. She now acknowledges that she should have revealed her illegal drug use, as well as the treatment and counseling she received, in response to pertinent questions on the SCA. She continues to maintain that the omission of this information was unintentional.¹²

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.”¹³

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 ¶ E3.1.15.¹⁴ An

¹⁰ GE 1 at 44-45.

¹¹ GE 1 at 50. Applicant’s certification also includes her understanding “that intentionally withholding, misrepresenting, or falsifying information may have a negative effect on my security clearance . . . up to and including denial or revocation of my security clearance . . .”

¹² Tr. at 23-24, 33-36; Answer; GE 5.

¹³ ISCR Case No. 11-03452 at 5 (App. Bd. June 6, 2012).

¹⁴ 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.”).

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. “A clearance adjudication is an applicant’s opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country.”¹⁵

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

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 excessive alcohol use from her teens to August 2003 raises this concern and 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.

Furthermore, although Applicant’s exaggeration of her own alcohol use may have contributed to her 2003 diagnosis of alcohol dependency, such diagnosis establishes

¹⁵ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

AG ¶ 22(e), to wit: “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program.”¹⁶

AG ¶ 23 sets forth a number of conditions that could mitigate the Guideline G concern. The following mitigating conditions are potentially raised by the evidence:

(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.

Applicant last abused alcohol in 2003. She has successfully completed multiple alcohol and drug treatment programs, participated in AA, and was in therapy up to 2007. She has now started drinking again after a (dated and possibly wrong) diagnosis of alcohol dependency. When an applicant has been properly diagnosed as alcohol dependent and advised to refrain from using alcohol, abstinence would be highly advisable because the resumption of alcohol use under such circumstances raises a significant concern. However, the guidelines do not require complete abstinence for all time following a diagnosis of alcohol dependence. Instead, an applicant in such circumstances must establish “abstention for a period of time sufficient clearly to establish that an applicant’s trustworthiness and reliability are not subject to question.”¹⁷ Applicant did not drink alcohol for four years following her discharge from an inpatient treatment program – treatment that she voluntarily sought out and completed. She then voluntarily went through further treatment and counseling for the next four years. Alcohol no longer has the same destructive hold over Applicant as it did nine years ago and she can stop drinking at will, as evidenced by her abstinence during two separate pregnancies over the past five years. Her current alcohol use is quite limited and done

¹⁶ ISCR Case No. 07-00558 (App. Bd. Apr. 7, 2008) (Application of AG ¶¶ 22(d) and (e) not limited to enumerated professionals).

¹⁷ ISCR Case No. 06-08708 at 4-5 (App. Bd. Dec. 17, 2007).

in a responsible fashion. 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) and (b) apply in full, while AG ¶ 23(d) applies in part. Applicant mitigated the alcohol consumption concern.

Guideline H, Drug Involvement

The security concern regarding illegal drug involvement is set forth at AG ¶ 24:

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.

Applicant's history of illegal drug use implicates the above concern, and establishes the following disqualifying conditions under AG ¶ 25:

- (a) any drug abuse; and
- (b) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Furthermore, Applicant's diagnosis of cocaine dependency, establishes AG ¶ 25(e), to wit: "evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized treatment program."

AG ¶ 26 sets forth a number of conditions that could mitigate the Guideline H concern. The following mitigating conditions are potentially raised by the evidence:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant has been drug free since August 3, 2003. She successfully completed an inpatient drug and alcohol treatment program in August 2003, followed by an

intensive outpatient treatment program and residency at a halfway house for five months where she learned to maintain her drug-free lifestyle. Applicant then entered therapy with an experienced counselor from 2004 to 2007. She does not associate with those involved with illegal drugs and has been drug free for nearly nine years. In short, Applicant's past drug use no longer casts doubt on her current reliability, trustworthiness, or good judgment. AG ¶¶ 26(a), (b), and (d) apply. Applicant mitigated the concern raised by her history of illegal drug use.

Guideline E, Personal Conduct

The personal conduct concern is set forth at AG ¶ 15:

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.

The guideline notes several disqualifying conditions that could raise a security concern, but only AG ¶ 16(a) warrants discussion:

[D]eliberate 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.

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA. An applicant should disclose any potential derogatory information. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified. Instead, an administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.¹⁸

Applicant intentionally falsified her SCA when she failed to disclose her use of cocaine and marijuana, and the subsequent treatment she received for her substance abuse issues. Applicant's illegal drug use dates back to when she was a teenager and ended on August 3, 2003 – a pivotal date in her life that she would not easily forget or confuse. Additionally, the subsequent treatment and counseling Applicant received was not even remotely close to being over seven years old at the time she signed her SCA. This evidence leaves Applicant's claim that she miscalculated the dates of her illegal drug use and treatment implausible and not credible. Applicant's true intent is further

¹⁸ See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

revealed by her failure to disclose on her SCA her residency at the halfway house and the past criminal charges related to alcohol and drugs.¹⁹ Disclosure of this information would have alerted the Government to her substance abuse history, which Applicant wanted to keep secret after nine months of unemployment. AG ¶ 16(a) applies.

An applicant may mitigate the personal conduct concern by establishing one or more of the mitigating conditions listed under AG ¶ 17. I have considered all the listed mitigating conditions and find that none apply. Applicant continues to maintain that the omissions at issue were a result of an honest mistake. Although the information that Applicant intentionally omitted from her SCA no longer raises a security concern, she did not know, at the time she signed her SCA and certified it was true, that a judge would ultimately find in her favor as to the adverse information she failed to disclose. Her dishonesty continues to cast doubt on her current reliability, trustworthiness, and good judgment. Applicant failed to mitigate the personal conduct concern.

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).²⁰ Applicant overcame years of alcohol and drug addiction, and leads a productive life that is centered on her family and work. This decision is not intended, nor should it diminish those accomplishments. However, Applicant's dishonesty at the initiation of her background investigation leaves me with serious reservations as to her suitability for access to classified information.

Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline G (Alcohol Consumption)	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Paragraph 2, Guideline H (Drug Involvement)	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant

¹⁹ ISCR Case No. 07-16653 at 2-3 (App. Bd. May 1, 2012) (uncharged falsification may be properly considered by an administrative judge in "assessing an applicant's credibility").

²⁰ (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.

Paragraph 3, Guideline E (Personal Conduct)

AGAINST APPLICANT

Subparagraphs 3.a through 3.c:

Against Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge