



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



In the matter of:)
)
) ISCR Case No. 10-08772
)
 Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

06/28/2013

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the concerns raised by her history of excessive alcohol consumption and three convictions for driving under the influence. She remains on probation until October 2014. Clearance denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on October 4, 2012, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption and criminal conduct guidelines. DOD adjudicators were unable to find that it is clearly consistent with the

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960; as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted its written case on January 3, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 11, 2013, but did not respond. Accordingly, the items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 11. The case was assigned to me on March 27, 2013.

Findings of Fact

Applicant, 32, is an employee of a federal contractor. She is unmarried and has no children.² The SOR raises concerns about Applicant's alcohol use.

Applicant began consuming alcohol at 15 years old. Her alcohol problems became acute after she enlisted in the Navy in June 2000. Applicant began drinking daily, consuming at least six beers and four shots of whiskey. She received her first conviction for driving under the influence (DUI) in October 2002. For unexplained reasons, it took Applicant six years to complete the conditions of her sentence. In July 2003, Applicant was hospitalized for alcohol intoxication with a blood alcohol concentration (BAC) of .27%. Shortly thereafter, her command referred her to a substance abuse rehabilitation program. Applicant reported to her substance abuse counselor (SAC) that in addition to the DUI and alcohol-related hospitalization, during the past year she had been sexually assaulted while intoxicated, used alcohol in conjunction with prescription narcotics, and experienced blackouts on at least four occasions. The SAC diagnosed Applicant as being alcohol dependent. Applicant failed the program because she did not attend Alcoholic Anonymous (AA) meetings as required. As a result, the Navy administratively discharged Applicant in October 2003. According to the administrative separation report, Applicant failed to correct her behavior regarding alcohol consumption after three medical evaluations and two rehabilitation programs.³

After her discharge from the Navy, Applicant continued to consume alcohol to intoxication. In July 2004, she began working as a bartender. Oftentimes she drank during her shifts and continued drinking with co-workers after the bar closed. Her last two DUI arrests occurred after her bartending shift. In 2009, Applicant received her second DUI conviction (BAC 0.16%). Consequently, the court suspended Applicant's license for one year. Eight months later, in April 2010, the police arrested Applicant after

² GE 4.

³ GE 5, 11.

she was involved in a one-car accident. Her BAC measured .22%. Applicant is on probation until October 2014.⁴

Applicant does not know if she is an alcoholic. Although she continues to consume alcohol, Applicant claims that she no longer drinks during her bartending shifts. She has no plans to abstain from alcohol use.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.

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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 favorable security decision.

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. 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

⁴ GE 5-10.

⁵ GE 5.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Alcohol Consumption

Applicant’s history of excessive alcohol consumption is a security concern because it is direct evidence of her repeated “exercise of questionable judgment” and her “failure to control impulses.”⁶ Furthermore her alcohol history casts doubts on her current reliability and trustworthiness.⁷ Applicant is an alcoholic. She was diagnosed with the condition in a U.S. Navy substance abuse program.⁸ Over the past 13 years, her alcoholism has resulted in her discharge from the Navy and three DUI convictions. She has demonstrated she is unable to restrain herself from drinking at work, or from engaging in dangerous and life-threatening conduct.⁹ None of the alcohol consumption mitigating conditions apply. Applicant has not acknowledged her alcohol problem. She continues to consume alcohol in complete disregard of the negative consequences of her alcohol dependence.

Whole-Person Concept

At this time, Applicant is not fit for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. Applicant’s alcohol dependence issues are severe. Her conduct shows a pattern of poor judgment and disregard for the law. She has no insight into the consequences of her behavior and continues to consume alcohol. Applicant is not in a position to appreciate the destructive nature of her alcohol dependence, let alone the potential peril she inflicts on others. As long as Applicant’s alcohol dependence remains untreated, her ability to safeguard classified information or perform sensitive duties remains compromised.

⁶ AG ¶ 21.

⁷ AG ¶ 21.

⁸ AG ¶ 22(e).

⁹ AG ¶¶ 22(a) - (c).

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

Conclusion

In light the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

Nichole L. Noel
Administrative Judge