



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



In the matter of:)
)
) ISCR Case No. 10-09217
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. Delaney, Esq., Department Counsel
For Applicant: *Pro se*

February 9, 2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, Alcohol Consumption. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On August 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption. DOHA acted 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), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR on August 29, 2011, and elected to have her case decided on the written record. Department Counsel submitted the Government’s File of Relevant Material (FORM) on September 29, 2011. The FORM was mailed to Applicant,

and she received it on October 19, 2011. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a reply. The case was assigned to me on January 19, 2012.

Findings of Fact

In Applicant's answer to the SOR, she admitted allegations ¶¶ 1.a and 1.c, and denied ¶ 1.b. of the SOR. The admissions will be treated as findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 49 years old. She is single, and never married. She has no children. She has worked as a firefighter for a defense contractor since 1985. She has an associate's degree. She has no prior military service, but has held a security clearance since 2000.¹

Applicant's conduct raised in the SOR includes: (1) consuming alcohol to the point of intoxication from 1982 to the present; (2) receiving outpatient alcohol treatment from June 1, 2009, to February 9, 2010, where she was diagnosed as alcohol dependent; and (3) continuing to consume alcohol despite her alcohol dependence diagnosis.²

Applicant first started drinking alcohol when she was 20 years old. Prior to last year, she became intoxicated at least once a week. Drinking two glasses of wine would get her "buzzed", while drinking a whole bottle of wine would make her intoxicated. When intoxicated, she slurred her speech and had difficulty walking. She usually drank in social settings and found drinking a pleasurable experience. Since she attended alcohol treatment from June 2009 through February 2010, she has reduced her consumption of alcohol. She currently consumes about three glasses of wine or three mixed drinks per week. She intends to consume alcohol moderately in the future.³

In June 2009, she voluntarily admitted herself to an alcohol treatment facility. The reason she entered the facility was because she was concerned she was drinking too much. During the first 30 days of the program, she attended five-hour sessions, five days a week. Thereafter, she attended two-hour sessions, twice a week. She also attended Alcoholics Anonymous (AA) meetings in the local area. After seven months of counseling sessions, she graduated from the program in February 2010.⁴

¹ Item 5.

² Item 1.

³ Items 6.

⁴ *Id.*

According to records provided by her alcohol treatment physician, Applicant was given a diagnosis of “Alcohol Dependence”. Her continued care plan from the program recommended that she remain abstinent from alcohol, attend a minimum of two AA meetings a week, and obtain an AA sponsor. Applicant has resumed drinking alcohol in what she deems a “moderate” amount. There is no evidence to indicate she is complying with the other care plan recommendations. She does not believe she is an alcoholic. Her explanation for the excessive drinking in the past is because she was going through a stressful time and she used alcohol to mitigate her stress. She stated that her alcohol treatment was very helpful and she continues to practice the skills she learned in the program to channel the stress and to engage in productive activities such as working out. Applicant provided no work performance information from her current employer.⁵

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 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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

⁵ Items 4, 6-8.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. Three are applicable in this case:

- (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 dependence; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant's pattern of drinking to the point of intoxication at least once a week through 2009, her diagnosis of alcohol dependence in February 2010, and her continued consumption of alcohol after she received alcohol treatment and despite recommendations for her to remain abstinent, support the application of all the above disqualifying conditions.

I have also considered all of the mitigating conditions for Alcohol Consumption under AG ¶ 23 and found the following relevant:

(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 has a demonstrated pattern of alcohol abuse related back many years. These incidents were not infrequent, nor did they happen under unusual circumstances. Applicant still uses alcohol despite receiving alcohol treatment and recommendations that she should remain abstinent, thus she has not established that similar incidents are unlikely to recur. AG ¶ 23(a) does not apply.

Applicant was diagnosed as alcohol dependent in February 2010. The counselor making the diagnosis also recommended Applicant's abstinence and AA participation. Applicant continues to drink alcohol and there is no evidence of continued AA participation. Applicant does not currently acknowledge that she is an alcoholic and currently drinks what she believes is a moderate amount. She has not established a pattern of abstinence. AG ¶ 23(b) does not apply.

Although Applicant completed an alcohol treatment program, she has not continued her abstinence or her AA participation as recommended by the counselor who diagnosed her as being alcohol dependent. AG ¶ 23(d) does not apply.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's long service as a firefighter to her employer. I considered Applicant's age, education, her 2010 diagnosis as being alcohol dependent, and her discontinued commitment to AA. I also considered that Applicant still consumes alcohol on a regular basis despite her history. Applicant has not presented sufficient mitigating evidence to overcome the alcohol concerns stated in the SOR allegations and failed to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline G, Alcohol Consumption.

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.c:	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.

Robert E. Coacher
Administrative Judge