



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-14371
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

09/17/2012

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant underwent inpatient treatment for alcohol and drug dependence in December 2008 and January 2009. She failed to follow the aftercare recommendations, including that she attend Alcoholics Anonymous (AA) meetings, and she severely minimizes her history of alcohol abuse and her diagnosis as being alcohol dependent. Clearance is denied.

On April 4, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges security concerns under Guideline G (alcohol consumption) and Guideline H (drug involvement). Applicant submitted a response to the SOR, dated April 26, 2012, in which she admitted all allegations. Applicant failed to indicate if she wanted a hearing or an administrative determination in her response to the SOR. Subsequently, by e-mail, dated May 10, 2012, Applicant requested a hearing.

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on July 18, 2012. A notice of hearing was issued on August 2, 2012, scheduling the hearing for August 21, 2012. The hearing was conducted as scheduled. The Government submitted four documentary exhibits that were marked as Government Exhibits (GE) 1-4 and admitted into the record without objection. Applicant testified and called one witness to testify on her behalf. She did not submit any documentary evidence. The transcript was received on September 5, 2012.

### **Findings of Fact**

After a thorough review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant is a 37-year-old woman who has been employed by defense contractors since February 2010. She was initially hired as an administrative specialist. A new contractor assumed the contract in October 2011, and Applicant has since worked as an IT help analyst. Applicant worked as a court reporter, interrupted by a few brief periods of unemployment, from January 2006 until she was hired by the defense contractor in 2010.

Applicant graduated from high school in 1993. She obtained an associate of arts degree in 1998. She attended court reporting school from August 2001 until December 2005.

Applicant was first married in June 1996. That marriage ended by divorce in January 1998, after Applicant discovered her husband had been unfaithful. She married again in April 2003, and that marriage ended by divorce in May 2004. Applicant has an eight-year-old son from this marriage. Applicant married a third time in August 2008, and that marriage ended by divorce in 2010.

Applicant self-referred herself to an inpatient substance abuse program on December 27, 2008, because of problems she was experiencing due to her polysubstance abuse. At the time of her admission, Applicant stated she began taking prescribed Xanax in her mid-20s, but had started abusing the drug about two months earlier. She also reported she was taking Ambien CR at night, and had experienced blackouts and sleep walking.

Applicant reported she began using alcohol when she was 19. She drank on weekends while in college, and began drinking about a bottle of wine four times a week between the ages of 25 and 27. She quit consuming alcohol when she was 28, and then became a self-described social drinker when she was 29 and 30. She then quit consuming alcohol again for about one year. She again began drinking alcohol in March 2008, and reported that she had been drinking daily for two months prior to her admission. During a psychiatric consultation, Applicant noted she had always used alcohol to cope. As part of a psychological assessment, she was described as a binge drinker who could stop for periods of time, but then would resume drinking when she got stressed out.

Applicant reported that she used cocaine several times between the ages of 25 and 27. She smoked marijuana on three occasions, but not at all since her early-20s. She was prescribed Ritalin while in college, but stopped taking that drug at age 24. She abused Lortab sporadically in a binge fashion, and had been taking six to eight tablets a day, three to four times a week, for a few months prior to her admission. Applicant used ecstasy twice at age 23, but not at all since then. She used acid once.

Applicant was hospitalized when she was 15, which was followed by an intensive outpatient program (IOP) for about a year. She consulted a psychiatrist when she was 19, and was hospitalized with bulimia nervosa. At an unspecified time, Applicant attended a few AA meetings. She attended Overeaters Anonymous meetings while being treated for bulimia.

Her admission record into the inpatient program reports Applicant has a history of nausea, tremor, passing out, memory loss, panic attack, anxiety, agitation, frustration, headache, stomach discomfort, sweating, depression, insomnia, eating problems, muscle cramping, and aggressive behavior. She was experiencing blackouts, memory loss, and loss of control over her actions at the time of her admission. She stated she had experienced such severe blackouts that she had even taken depositions as a court reporter without remembering having done so.

Applicant was discharged from the inpatient program on January 11, 2009. Her final DSM-IV discharge diagnoses, made by a physician, were:

- Axis I: Alcohol dependence. Opiate dependence. Benzodiazepine dependence. Depressive disorder, NOS. Anxiety disorder, NOS.
- Axis II: Personality disorder, NOS, with cluster B and C traits.
- Axis III: Psoriasis.
- Axis IV: Severe.
- Axis V: GAF 40/60%.<sup>2</sup>

Applicant attributes the severe substance abuse issues she was experiencing at the time of her admission to problems she was having with her marriage. Her husband lost his job and Applicant became the sole support for the family, which included her husband's three children from a prior marriage. Additionally, although Applicant's husband had previously been a patient in the same inpatient treatment center she entered, he continued to drink and use controlled substances.

Against the recommendation of the inpatient program, because he was considered to be the biggest threat to her sobriety, Applicant returned home with her husband following

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<sup>2</sup>The entire history of Applicant's substance abuse history, physical and mental history, and DSM-IV diagnoses is taken from GE 4.

her discharge from the program. Recommendations at the time of her discharge included continued mental health treatment, family counseling, immediate attendance at Narcotics Anonymous (NA) or AA meetings that should continue indefinitely, obtain a female sponsor and begin working the 12 steps with her, begin IOP the day after discharge and complete it. Her prognosis was deemed to be fair.

Applicant separated from her husband a few days after she was discharged from the inpatient program. She moved with her son to live near her parents, which is about a two hour drive from where she had been living. She attended one AA meeting before moving, but did not seek out any AA program after moving. She has not attended any AA or NA meetings since the move. Instead, she relies upon going to church with her parents and engaging in physical activities such as bicycle riding.

Applicant saw a psychiatrist three or four times shortly after she moved to be near her parents. She was initially prescribed Lexapro for depression and anxiety. She didn't like taking Lexapro, and now takes Celexa to treat her depression. She no longer receives psychiatric care, and her medication is prescribed by a general physician. Applicant did not pursue any of the other recommendations that were made when she was discharged from the inpatient program.

Applicant testified she has only consumed alcohol a few times since she was discharged from the inpatient program (Tr. 32), the last time being a glass of wine she drank at a Christmas party in December 2011. (Tr. 44 and 50) She claims she did not know until recently that she had been diagnosed as alcohol dependent. (Tr. 44) She also testified that she did not then and does not now consider herself to be alcohol dependent, although she concedes the medical providers who made the diagnosis probably know more than her. (Tr. 43) She also testified that she thinks being addicted means thinking about something constantly, but she does not wake up in the morning thinking about needing a drink. (Tr. 50)

## **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption) and Guideline H (drug involvement) with their disqualifying and mitigating conditions are most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup>

## Analysis

### Guideline G, 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. (Adjudicative Guideline [AG] ¶ 21)

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

## Guideline H, Drug Involvement

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. AG 24

Applicant has a history of abusing prescribed and non-prescribed medications, and alcohol. She self-referred herself to a two-week inpatient program on December 27, 2008, where she was diagnosed with multiple conditions, including alcohol dependence, opiate dependence, and benzodiazepine dependence. She reported severe blackouts that even caused her to be unable to remember performing assignments as a court reporter. Applicant's prognosis at discharge was deemed to be fair, but she failed to follow any of the many aftercare recommendations.

The following alcohol consumption Disqualifying Conditions (DC) apply: DC (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*; DC 22(b): *alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*; 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*; DC 22(d): *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.*

The following drug involvement disqualifying conditions apply: DC 25(a): *any drug abuse*; and DC 25 (d): *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence.*

It has been over three and one-half years since Applicant completed the inpatient program. During that time, she has obtained a divorce from the man who was a contributor to her abuse problems. There is no evidence to indicate she has abused any controlled substances since her discharge from the program.

However, Applicant has a long history of physical and mental health issues that continue with her currently taking prescribed medication to treat depression. Her abuse of controlled substances long preceded the marriage which apparently exacerbated her mental health and substance abuse problems. While she completed the inpatient program, she failed to follow any of the recommended aftercare proposals. Instead, she has chosen to rely on her parents, church, and physical activities to maintain her sobriety. Applicant minimizes her alcohol abuse, questions the diagnosis of alcohol dependence, and has used alcohol, although in moderation, since being discharged from treatment.

Applicant did not undertake IOP treatment, as recommended, that will help her cope with stress and anxiety when and if it comes her way. She did not complete, or even begin to undertake, the NA or AA 12-step program, as recommended. She did not obtain a sponsor, as recommended. Despite her three and one-half years of sobriety, Applicant's failure to build the recommended support system that will assist her in maintaining sobriety when and if bad things happen in her life places her in great jeopardy of relapse. As a result, the fair prognosis she was given at discharge from inpatient treatment becomes tenuous. Based on her failure to follow the aftercare recommendations, it cannot be said with any degree of confidence that she will not relapse in the future.

Accordingly, I find the following alcohol consumption Mitigating Conditions (MC) do not apply: 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*; MC 23(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 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 on 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.*

Likewise, the following drug involvement mitigating conditions do not apply: MC 26(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*; MC 26(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 MC 26(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.*

Considering all relevant and material facts and circumstances present in this case, the whole-person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the security concern caused by her alcohol consumption and drug involvement. She has not overcome the case against her nor satisfied her burden of persuasion. Guideline G and Guideline H are decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

## **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-d:	Against Applicant
Paragraph 2, Guideline H:	Against Applicant
Subparagraphs 1.a-f:	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 a security clearance for Applicant. Clearance is denied.

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Henry Lazzaro  
Administrative Judge



