



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



In the matter of:)	
)	
)	ISCR Case No. 12-00459
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: Russell K. Olson, Personal Representative

11/20/2014

Decision

WHITE, David M., Administrative Judge:

Applicant had alcohol-related driving offenses in 2003 and 2006, and incurred about \$12,000 in delinquent debts prior to obtaining her present employment. She completed an alcohol treatment program, is near completion of a debt consolidation program, and has no recent incidents of security concern. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 8, 2011. On April 11, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Alcohol Consumption) and Guideline F (Financial Considerations). The action was taken 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on May 29, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 29, 2014. The case was assigned to me on July 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on August 25, 2014, setting the hearing date for September 9, 2014. After I granted Applicant's request for a continuance, DOHA issued an Amended Notice of Video Teleconference Hearing on August 28, 2014. I convened the hearing, as rescheduled, on September 30, 2014. Applicant, her personal representative, and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through C, which were admitted without objection, and testified on her own behalf. Her personal representative also provided testimony. I granted Applicant's request to leave the record open until October 6, 2014, for submission of additional evidence. Applicant timely submitted AE D, which was admitted after being forwarded by Department Counsel without objection. DOHA received the transcript of the hearing (Tr.) on October 7, 2014.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor, where she has worked since November 2011. She is a high school graduate, and earned a college diploma in medical assisting in March 2010. She is single, with no children. She has no military service, and this is her first application for a security clearance. (GE 1; AE C; Tr. 8-9, 40.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.b through 1.d, 1.f, 1.g, 2.a through 2.k, and 2.o, with explanations. She denied the remaining allegations. (AR.) Applicant's admissions, including her statements in response to DoD CAF interrogatories (GE 2), are incorporated in the following findings.

Applicant lives in a town with a large military presence, and partied frequently while in her early twenties. After drinking five to seven drinks with friends at a bar on a Friday night in June 2003, Applicant attempted to drive home. She was stopped for speeding, failed a field sobriety test, and registered a blood alcohol content (BAC) reading of .11 after being arrested for Driving Under the Influence (DUI). She entered into a two-year pretrial diversion agreement under which she was fined \$750, underwent an alcohol assessment, and was required to have no further offenses for two years. She was evaluated as an alcohol abuser and attended the recommended eight-hour Alcohol Information School. In July 2005, having complied with all court-imposed requirements, her DUI charge was reduced to a Negligent Driving 1st Degree conviction and the case was closed. (GE 1; GE 2; AE A; Tr. 39.)

On July 28, 2006, Applicant was arrested for another DUI offense after making an illegal lane change while driving home from a friend's house after drinking. Her BAC tested at .10, which exceeded the state's legal limit of .08 for presumed intoxication. In

October 2006, she entered into a deferred prosecution agreement which, under state law, required that she be diagnosed as alcohol dependent to qualify for the program. The agreement required her to complete a two-year intensive outpatient alcohol treatment program and attend Alcoholics Anonymous (AA) meetings, several other miscellaneous requirements, and to pay a fine of \$875. After being diagnosed alcohol dependent she enrolled in the treatment program in September 2006. She was discharged from the program in September 2008 for falling behind on payments to the treatment center and missing several required AA meetings for which she submitted forged attendance slips. She then entered another alcohol treatment program, which the court later found that she successfully completed in April 2009. She remained on unsupervised probation under the agreement until April 20, 2012, at which point the court found her in full compliance with the requirements of the deferred prosecution agreement, and dismissed the DUI charge against her. (GE 1; GE 2; AE A; Tr. 40.)

During December 2006, Applicant engaged in a series of telephone and text message communications with her former boyfriend and the woman with whom he was then living. There was no alcohol involved in these incidents since she was participating in the two-year alcohol treatment program described above, and not drinking at the time. When the woman informed Applicant that she was sexually involved with the former boyfriend, Applicant became irate and made threats to beat them up. The woman reported the threat to police and, about four months later, Applicant received a summons in the mail to appear in municipal court on a charge of telephone harassment. She was not arrested in connection with this charge. On advice of her court-appointed attorney she pled guilty during June 2007. She was sentenced to two years of unsupervised probation and two weeks of house arrest, fined \$1,000, and ordered to complete an eight-hour anger management class. She successfully satisfied all sentence requirements and was discharged from probation in June 2009. (AR; GE 1; GE 2; AE B; Tr. 44-49.)

During her interview with an investigator from the Office of Personnel Management, on October 31, 2011, Applicant said that she began consuming alcohol in about 1997, obtaining it from a friend while underage. She told the investigator that she had resumed moderate alcohol consumption, having two or three drinks once per week while socializing with friends. She abstained from alcohol altogether during her alcohol treatment between September 2006 and April 2009, and has not drunk to the point of intoxication since her July 2006 DUI offense. Despite the 2006 diagnosis that was a prerequisite for her deferred prosecution agreement, she does not consider herself to be alcohol dependent at this point and has had no adverse alcohol-related incidents since that DUI. She testified that she was drinking to excess prior to her 2006 DUI, but her alcohol consumption has been infrequent and under control since then. (AR; GE 2; Tr. 47-48.)

Applicant held about 25 different short-term, low-paying, and part-time jobs primarily in the retail and food service industries between March 2000 and June 2010. Few, if any, offered health insurance. After obtaining her diploma in medical assisting, she began working in a children's medical clinic in June 2010. She earned her state

Health Care Assistant Certification in November 2010, and her supervisor described her as “an outstanding team member” who was “one of our best medical assistants.” Unfortunately, due to staffing reductions, she was laid off in January 2011. Unable to find another medical assistant position, she was unemployed until November 2011 when she began her current employment. Her current supervisor described her as “dependable and reliable; completing any work that has been assigned to her, in a timely fashion.” He further described her as always being very honest and forthcoming, and a valuable employee. (AR; GE 1; GE 2; AE C.)

Applicant suffered from a series of medical problems while uninsured, and began encountering financial difficulties in about 2002 that were exacerbated by her low pay, fines, court fees, and treatment program costs described above. She incurred a number of medical bills that she could not pay and were placed for collection. She also incurred credit card, cell phone, and other retail debts that became delinquent, as set forth in the SOR and reported on her record credit reports. She does not dispute the original validity of any of the 23 SOR-listed debts, totaling \$11,994. (AR; GE 1; GE 2; GE 3; GE 4; Tr. 56-57.)

In July 2011, anticipating steady income from her current employment, Applicant contracted with a reputable financial counseling and debt consolidation service to help her resolve her delinquent debts. The service began paying her then-known delinquencies under her debt consolidation plan in August 2011. Those delinquencies owed to creditors who agreed to accept payments under the plan were all paid off by February 2013. These debts comprise the allegations in SOR ¶¶ 2.l through 2.w. At that point, Applicant borrowed \$5,897 from her parents to repay debts to known creditors who refused to participate with her debt consolidation service. She made regular repayments totaling \$3,883 to her parents for this loan between February 2013 and April 2014. At that point, she received the SOR from the DoD CAF, identifying additional delinquent debts of which she had been unaware. She resumed participation in her debt consolidation program starting in May 2014 to address the debts alleged in SOR ¶¶ 2.a through 2.i, and has made regular \$220 monthly plan payments since then. She contacted the creditor alleged in SOR ¶ 2.k and was told they had no record of that \$564 debt or any other account in her name. She made direct payments to the creditors to settle the debts alleged in SOR ¶¶ 2.j and 2.o. Her parents agreed that she should suspend repayment of the remaining \$2,014 on their loan until she finishes the consolidation program again. (AR; AE B; Tr. 41-44, 52-56, 59-60.)

Applicant submitted a personal financial statement demonstrating sufficient monthly income to cover her regular expenses and payments toward the debt consolidation plan, with a remainder of \$240. She has full medical and dental insurance through her employer. (AE D.)

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 or 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.

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. The DCs raised by the allegations in the SOR and record evidence are:

(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;

(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; and

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant committed DUI offenses in June 2003 and July 2006. She admitted drinking alcohol at times to excess and to the point of intoxication from 1997 until her 2006 DUI arrest and entry into alcohol treatment. She has not drunk alcohol to the point of impaired judgment or intoxication since then. She was evaluated with alcohol abuse after her 2003 DUI, but was not recommended for treatment. As a prerequisite for entry into the treatment program required her deferred prosecution agreement, she was evaluated as alcohol dependent after her 2006 DUI. These facts support security concerns under the foregoing DCs. The telephone harassment incident alleged in SOR ¶ 1.e was not alcohol-related, and supports no concern under this guideline.

I also considered the applicability of AG ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program;" and of AG ¶ 22(g), "failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence." A "relapse" is defined as, "Return of the manifestations of a disease after an interval of improvement. SYN recurrence."¹ Applicant has exhibited no manifestations of alcohol abuse or dependence after completion of her 2006 alcohol rehabilitation program. Her failure to timely make some required payments and attend a few required AA meetings led to her discharge near the end of her first court-ordered

¹*Stedman's Medical Dictionary* 1525 (26th ed., Williams & Wilkins 1995).

treatment program, but she immediately enrolled in another program and successfully completed all court-ordered treatment in April 2009. Accordingly, I find no substantiated security concerns under either of these DCs.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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's alcohol-related conduct of security concern took place during and prior to July 2006, at which point she was 26 years old. She was living a different lifestyle while young, then completed an alcohol treatment program, and more than eight years have passed without further incident. She has been successfully employed in a responsible position for three years. Under the circumstances, I find that recurrence of alcohol-related misconduct is unlikely, and her earlier incidents do not cast doubt on her current reliability, trustworthiness, or good judgment. Applicant met her burden to establish substantial mitigation under AG ¶ 20(a).

Applicant did not meet all of the exact criteria to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d). While admittedly diagnosed as alcohol dependent in order to qualify for her desired deferred prosecution agreement, the record only establishes two alcohol-related incidents separated by three years, which might place that diagnosis in some doubt. She has not been abstinent over the past few years, but successfully completed outpatient rehabilitation and drinks moderately and responsibly,

as called for under AG ¶¶ 23(b) and (d), This establishes partial mitigation under those provisions, and supports my conclusions regarding AG ¶ 23(a).

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Prior to obtaining professional certification and beginning meaningful employment in 2010, Applicant incurred a number of relatively small delinquent debts, totaling about \$12,000, that she was unable to repay. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems arose while she was under-employed. Once able, in mid-2011, she entered into and has consistently followed a disciplined debt consolidation and repayment program while maintaining steady and well-paying employment. Combined with her responsible budget and monthly net remainder, these facts support a finding that her financial issues are unlikely to recur and do not reflect on her current reliability and judgment. Applicant established substantial mitigation under AG ¶ 20(a).

Applicant also offered evidence to support some mitigation under AG ¶ 20(b). Many of her SOR-listed debts were for medical expenses incurred while she was unable to obtain health insurance. She now has employer-provided insurance and incorporated all previous medical debts into her successful debt consolidation program. This establishes that she acted responsibly conduct under the circumstances with respect to these debts.

Applicant underwent financial counseling, entered a debt consolidation and resolution program well before any security-related concerns were raised by the Government, and demonstrated a solid basis on which to predict improved financial management. She did not assert any basis to dispute her obligation to repay her delinquent debts, and continues to make regular payments toward them. These facts establish additional mitigation under AG ¶¶ 20(c) and (d).

“An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has ‘taken significant actions to implement that plan.’” ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has successfully established a meaningful track record of debt resolution that predated her security clearance application and successfully continues to date.

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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant is a sincere individual, who has matured after a period of irresponsible conduct in her youth. She accepted accountability for her earlier bad choices and actions, and has demonstrated responsible conduct over the past five to six years. She documented positive permanent behavioral changes and rehabilitation with respect to both financial and alcohol-related issues that supported security concerns earlier in her life. Her conduct has eliminated the potential for pressure, coercion, or duress, and makes continuation or recurrence of similar problems unlikely. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a through 2.w:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge