



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-05958

**Appearances**

For Government: Nicole Smith, Esq., Department Counsel  
For Applicant: John Tellez, Personal Representative

01/12/2017

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding her alcohol consumption and criminal conduct. Eligibility to access classified information is granted.

**Statement of Case**

On June 10, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865 (E.O. 10865), *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on July 24, 2015, and requested a hearing. The case was assigned to me on April 1, 2016. The Defense Office of Hearings and Appeals

(DOHA) scheduled the hearing on May 23, 2016. At the hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on two witnesses (including herself) and four exhibits (AEs A-D). The transcript (Tr.) was received on June 1, 2016.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with an updated alcohol assessment and Alcoholics Anonymous (AA) chips commemorating sobriety. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded one day to respond.

Within the time permitted, Applicant supplemented the record with a faxed appointment letter from her treating psychiatrist, scheduling her for an appointment on June 24, 2016. Applicant followed with an email from her personal representative confirming that Applicant decided not to go through with an alcohol evaluation out of concern for the post-submission deadline and her physician's not being certified to render a specific alcohol evaluation. Applicant's submissions were admitted without objection as AEs E-F.

After reviewing all of the evidence developed in the record, I granted Applicant, *sua sponte*, the opportunity to obtain evaluations of both her alcohol and stress-related disorders that include detailed criteria covered by the Diagnostic and Statistical Manual of Mental Disorders (Amer. Psych. Assoc., 5<sup>th</sup> ed. 2013) (DSM-5) and best recovery prognoses (with time lines if possible) for the foreseeable future.

For good cause shown, without objection, Applicant was granted 30 days to obtain these evaluations and provide them for submission through Department Counsel. Applicant supplemented the record with a cover email from her personal representative and updated diagnosis and prognosis from her treating psychiatrist within the 30 days permitted. Applicant's post-hearing submission was admitted without objection as AE G.

### **Summary of Pleadings**

Under Guideline G, Applicant allegedly attended alcohol counseling at a local addiction center (A Center) from approximately February 2014 to at least June 2014, where she was treated by a licensed substance abuse counselor and diagnosed as alcohol dependent.

Under Guideline J, Applicant was (a) arrested and charged with driving under the influence (DUI) in September 2013, pled guilty to DUI and received a sentence of 12 months of probation and a fine of \$1,800, with the remaining speeding and other alcohol-related charge dropped and (b) was arrested and charged with driving while intoxicated (DWI) and a count 2 DWI in January 2014, pled guilty to an amended count 1 endangerment (arrest date in September 2013) an amended count two, a class 2 misdemeanor, and was sentenced on both counts (DWIs) to a total of three years

probation, ten days in jail (five weekends), fined \$2,400.50, ordered to have an ignition interlock placed on her vehicle, and had her driver's license suspended for 30 days.

In her response to the SOR, Applicant admitted each of the allegations with explanations. She claimed she has abstained from drinking for over a 12-month period, frequented AA meetings, and received a current favorable prognosis. She claimed that she recently completed an outpatient program with an alcohol-addiction center (A Center) and is currently enrolled in a continued alcohol prevention program, corroborated in writing by a licensed substance abuse counselor. She claimed also that her alcohol-related arrests are being addressed by treatment that has ultimately helped her to become a better, more trustworthy person.

### **Findings of Fact**

Applicant is a 40-year-old depot coordinator of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted are incorporated herein. Additional findings will follow.

### **Background**

Applicant married her first spouse in August 1997 and divorced him in November 2000. (GE 1) She has two adult children from this marriage. (GEs 1-2) She remarried in 2000, separated in 2011, and divorced in 2013. (GEs 1-2) Applicant remains friends with her second husband and maintains monthly contact with him. (GE 2) She has no children from her second marriage. (GE 1-2)

Applicant attended college classes between July 2010 and March 2011, but earned no degree or diploma. (GE 1) She claimed no military service. Applicant has worked for her current employer since June 2001. (GE 1; Tr. 33) Currently, she works within her employer's engineering product support program, where she coordinates her employer's factory and products orders and manages some of her firm's funding issues. (GEs 1-2; Tr. 38-39) She has held a security clearance since 2001. (GE 1)

### **Applicant's alcohol-related arrests**

Applicant was involved in two alcohol-related incidents between September 2013 and July 2014. (GEs 2-3 and AE D) In September 2013, she was arrested by local police for (DUI. Applicant was returning home from a social event with friends when she ran over a median divide and struck some shrubbery. GE 2) After registering a .23 percent blood-alcohol level (BAC) for the police who stopped her, she was arrested and charged with DUI.

Applicant pled guilty in court to the September 2013 DUI charge in January 2014 and was sentenced to 12 months probation, fined \$1,800, and ordered to complete alcohol screening. (GEs 2-3; Tr. 33, 41-42) She reported her September 2013 DUI arrest to her employer promptly following her arrest disposition. (GE 3; Tr. 43-44)

Records document that Applicant was arrested for a second alcohol-related incident in January 2014 after registering a .25 percent BAC for the police who stopped her. (GEs 2-3; Tr. 44-45) She pled guilty in court to an amended count one (endangerment, cited in her September 2013 arrest) and amended count two, a class one misdemeanor, and was sentenced on both counts to three years probation, ten days in jail (five weekends), fined \$2,400 (inclusive of fines, fees, and penalties), and ordered to have an interlock placed in her ignition for 30 days and her driving privileges to be suspended for 30 days in March 2016. (AE D; Tr. 45-48)

With restoration of Applicant's driving privileges, Applicant voluntarily had her interlock reinstated for another 12 months. (Tr. 48) Evidence is probative of Applicant's compliance with the terms of her probation, and she was released from her probation terms in March 2016 for cited reasons of successful completion of her probation conditions. (AE D; Tr. 34-35)

### **Applicant's alcohol history**

Applicant was introduced to alcohol in high school. (GE 2) She typically consumed one to two beers in a sitting, once or twice a month in high school when "hanging out with friends." (GE 2, at 4) After abstaining from alcohol during her two pregnancies, she returned to drinking on a weekly basis in the late 1990s. (GE 2)

Beginning in 2012, Applicant experienced several traumatic situations in her life: loss of a family member, a cancer diagnosis, and marital problems that ultimately led to divorce. (GE 2) Taken together, these problems in her life contributed to increased drinking (as much as six to eight mixed drinks before each of her alcohol-related incidents). Applicant's excessive drinking affected her judgment. She admits to drinking to the point of intoxication (four to five beers or mixed drinks) on other occasions besides those that preceded her two alcohol-related incidents.

Following her second alcohol-related incident in January 2014, Applicant quit drinking and submitted to alcohol counseling with A Center. (GE 2 and AEs A-B) While in counseling with A Center, a certified substance abuse counselor at the Center treated Applicant for co-existing alcohol and emotional disorders and diagnosed her with alcohol dependence. (Applicant's response to SOR and AE B; Tr. 49, 52-53, and 63-64)

Between February 2014 and June 2014, Applicant attended outpatient counseling sessions at A Center for her depression stemming from her alcohol-related incidents and other personal stresses in her life. Her therapy sessions included 32 hours of Level I and Level II group sessions that included random testing for alcohol and another six individual therapy sessions. (GE 2 and AEs A and B; Tr. 34, 50-52)

Applicant's A Center treatment counselors credited Applicant with completing her Phase I group therapy sessions in April 2014 and five sessions of her Phase II group therapy in May 2014 before moving out of the area and discontinuing her A Center

therapy sessions. (AE B; Tr. 55) Since relocating, Applicant has not been back to A Center and has not received any updated alcohol dependence diagnosis or prognosis from the center. (AE B; Tr. 64)

Applicant attended weekly AA meetings while enrolled with A Center and continued her AA meetings for six months after she completed her A Center therapy in June 2014. (Tr. 55) She maintains the continuing support of her family and friends and expressed confidence in her coping skills to avoid alcohol as a self-medicating means of addressing emotional issues in her life. (Applicant's response to SOR; Tr. 52-55, 61) She is corroborated in part by the written assessments of her treatment providers. (AEs A-B)

While she claimed she received a chip from her AA chapter commemorating six months of abstinence, she never provided a copy of the chip or probative evidence of her past sponsor. (Tr. 58-60) She continues to use an interlock on her car to validate her abstinence commitments and assured she will continue to sustain her abstinence after her interlock comes off. (Tr. 53)

Applicant consulted with her treatment providers in March 2016. (AE A-B) In her March 2016 treatment summary, Applicant's substance abuse counselor credited Applicant with demonstrating her commitment to recovery, sobriety, and abstinence from all drugs and alcohol. (AE B)

Applicant has been a patient of her treating psychiatrist (Dr. O, board certified in psychiatry) since April 2011. (AE A; Tr. 50-51) Dr. O credited Applicant with successfully completing an outpatient rehabilitation program and remaining sober and fully employed. However, Dr. O did not detail the specifics of Applicant's outpatient treatment in this visit, or whether it included alcohol assessments. Until recently, Dr. O never diagnosed Applicant for alcohol abuse or dependence during her many years of treating Applicant according to her personal representative, (AEs E and F)

While Applicant no longer attends outpatient therapy sessions or AA meetings, she continues to remain abstinent. (AE G) Afforded an opportunity to obtain updated evaluations of both her alcohol and stress-related disorders that include detailed criteria covered by the DSM 5 and best recovery prognoses (with time lines if possible) for the foreseeable future, Applicant consulted with Dr. O in November 2016. (AE G)

In her November 2016 evaluation of Applicant, Dr. O (Applicant's treating psychiatrist) diagnosed her with major depressive disorder recurrent moderate, currently in full remission (DSM 5 F33.42), Attention Deficit Disorder combined (DSM 5 90.2), and Alcohol Use Disorder Moderate (DSM V 10.20) in sustained remission. (AE G) Dr. O credited Applicant with being compliant with her medications and sober since May 2014, a period of over 30 months. (AE G)

Dr. O found Applicant to have good insight into illnesses and good judgment by choosing to stay on treatment. She assigned a good prognosis for so long as she continues with her treatment plan. (AE G)

## **Character References**

Applicant is well-regarded by her employer and has received excellent performance evaluations. (AE C) Her direct supervisor of over five years (an Air Force veteran of 30 years who holds a security clearance) characterized her as an excellent team member who has received regular promotions and is credited with exceeding expectations in her performance evaluations. (Tr. 26-30)

In the company's social events her supervisor has attended, he has never observed her consuming alcohol. (Tr. 29) Her supervisor acknowledged his awareness of her cancer diagnosis and adjusted her work schedule to accommodate her treatment sessions. (Tr. 26-27) He acknowledged his awareness, too, of Applicant's two DUI incidents in 2013 and 2014 and court-ordered counseling. (Tr. 28) Her supervisor does not drink and never socialized with Applicant before or after her reported DUI incidents. (Tr. 29)

## **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These AGs include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and any of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Alcohol Consumption**

*The Concern.* 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.

### **Criminal Conduct**

*The Concern.* Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of E. O. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of

demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## **Analysis**

Security concerns are raised over Applicant’s history of alcohol-related incidents and excessive drinking. By all accounts, Applicant is a highly regarded depot coordinator who in the past has experienced alcohol and stress-related issues associated with her cancer diagnosis, loss of a family member, and marital problems leading to divorce. Collectively, these problems contributed to increased drinking and two alcohol-related incidents in 2013 and 2014. Principal security issues raised in this case center on Applicant’s history of alcohol abuse and alcohol-related criminal conduct. Since her 2014 DUI, she has received counseling and received an alcohol-dependence diagnosis from her A Center licensed substance abuse providers. Additionally, she has received counseling for her stress and emotional issues from her treating mental health physician.

Applicant’s recurrent problems with abusive drinking over a period of several years (dating to 2012) raise initial concerns over the risk of her returning to abusive drinking in the foreseeable future. On the strength of the evidence presented, three disqualifying conditions (DC) of the AGs for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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,” 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,” and DC ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence.”

An overlapping disqualification for criminal conduct also applies to Applicant’s alcohol-related arrests. DC ¶ 31(d), “a single serious crime or multiple lesser offenses.” Applicant’s two DUIs are alcohol-related offenses that are covered by the alcohol and criminal conduct guidelines.

Once Applicant accepted counseling and her dependence diagnosis following her second DUI in 2014, she committed to sobriety with the support of her AA network and family. Over the course of the ensuing two years, her faithful commitments to her outpatient program and AA meetings earned her praise from her treatment counselors and her managers at work. While she no longer attends AA meetings, the lessons she learned from her counseling programs and AA participation have served her well and given her confidence that she can maintain her sobriety without fear of a relapse.

Applicant’s successful counseling efforts and sustained abstinence for over two years entitle her to the benefits of four mitigating conditions (MCs). MC ¶ 23(a) of Guideline G, “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);" MC ¶ 23(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 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 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 duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program," are fully applicable to Applicant's situation.

While neither MC ¶ 23(b) nor MC ¶ 23(d) of Guideline G provide any bright lines for gauging the sufficiency of an applicant's period of sustained abstinence, the DSM-5 suggests a period of at least 12 months of sustained abstinence as a factor to consider when assessing an applicant's recovery progress and recurrence risks. Alcohol avoidance of alcohol for over two years is something that Applicant has credibly demonstrated with her proofs. Her continued abstinence is an important consideration in determining what weight to assign to her reformed drinking claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579, at 5 (App. Bd. Apr. 14, 2004).

Applicable as well to Applicant's situation is MC ¶ 32d). "there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement," of Guideline J. Applicant's rehabilitation efforts, which includes sustained abstinence for over 30 months, are considerable and can be expected to keep her avoid any recurrent alcohol-related incidents in the foreseeable future.

In Applicant's case, she was diagnosed alcohol dependent by her counselors at A Center. She accepted her diagnosis and pursued counseling and treatment of her condition. Her probative years of abstinence over a 30-month period is impressive and reflects a concerted determination on her part to remain alcohol-free. Her completion of a four-month counseling program, her continued counseling with her mental health provider, and her sustained continued sobriety with the aid of her family and providers complement her commitments to avert any future recurrence.

Afforded a post-hearing opportunity to obtain updated evaluations of both her alcohol and stress-related disorders that include detailed criteria covered by the DSM 5 and best recovery prognoses (with time lines if possible) for the foreseeable future,

Applicant consulted with Dr. O in November 2016. (AE G) In her November 2016 evaluation of Applicant, Dr. O diagnosed her with major depressive disorder recurrent moderate, currently in full remission (DSM 5 F33.42), Attention Deficit Disorder combined (DSM 5 90.2), and Alcohol Use Disorder Moderate (DSM 5 10.20) in sustained remission. (AE G) She credited Applicant with being compliant with her medications and sober since May 2014, a period of over 30 months. (AE G) Dr. O found Applicant to have good insight into illnesses and good judgment by choosing to stay on treatment. She assigned a good prognosis for so long as she continues with her treatment plan. (AE G)

Historically, the Appeal Board has emphasized the importance of a strong rehabilitation program and a seasoned track record. See ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007); ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007). Applicant has met these requirements with an impressive showing of outpatient treatment and sustained abstinence over a two-year period with the aid of her AA and family support groups.

Taking into account both Applicant's history of alcohol abuse and incidents away from work and corresponding solid probative evidence of a seasoned track record of abstinence (both with and without probation reporting requirements), the applicable guidelines, and a whole-person assessment of her avoidance of alcohol following her last alcohol-related incident in 2014, it is safe to conclude that Applicant's alcohol dependence diagnosis is in full remission and likely to remain so for the foreseeable future.

Based on both Applicant's showing of sustained abstinence, aided by professional counseling, AA participation, continued family support, and a whole-person assessment of the overall trust and reliability that Applicant enjoys with her managers who are familiar with her alcohol issues and work performance, conclusions are warranted that Applicant has mitigated security concerns over her history of abusive drinking.

### **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE G ( ALCOHOL CONSUMPTION):      FOR APPLICANT

Subparagraph 1.a :                                      For Applicant

GUIDELINE J (CRIMINAL CONDUCT)              FOR APPLICANT

Subparagraphs: 2.a and 2.b:                      For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge