



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



In the matter of:)
)
) ISCR Case No. 15-04916
)
)
 Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *pro se*

09/30/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by her two alcohol-related arrests. Clearance is granted.

Statement of the Case

On January 17, 2016, 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. 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 (AG).

In an answer dated February 11, 2016, Applicant admitted the allegations and requested a hearing. On June 6, 2016, the case was assigned to me. On June 20, 2016, a notice of hearing was issued scheduling the case for August 15, 2016. At the

hearing, I received seven Government exhibits marked as Government Exhibits (GE) 1 through 3, and 17 Applicant exhibits marked as Applicant's Exhibits (AE) A through Q. DOHA received the transcript (Tr.) on August 24, 2016.

Findings of Fact

Applicant is a 30-year-old married woman with a 12-year-old stepchild whom she legally adopted. She graduated from college in 2009, majoring in environmental science. In 2016, she earned a master's degree in the field of geographic information science. (Tr. 15) Since finishing college, she has worked as a remote imaging geographic spatial analyst. (GE 2 at 3)

Applicant is highly respected on the job and in the community. A coworker characterized her as an exemplary person who pays an acute attention to detail and "demonstrate[s] an extreme amount of pride and professionalism in [her] work." (AE H) A cartographer, who befriended Applicant at a social outing and subsequently attended several networking conferences together, characterized Applicant as "an incredible mentor." (AE K) According to her supervisor, Applicant is an industrious employee who achieved milestones "well in advance [of] the mandated due dates . . ." (AE B at 2) Her competency ratings consistently are exceptional. (AE B and C)

In September 2009, Applicant was arrested and charged with driving while intoxicated (DUI). She pleaded no contest to the charge, whereupon the court suspended her license for three months, ordered her to perform 100 hours of community service, and ordered her to be subject to random urinalyses during probation. (Tr. 18) This arrest occurred a few months after Applicant finished college.

In January 2015, Applicant was stopped by the police after an improper lane change. After she failed a sobriety test, she was arrested and charged with DUI and disregarding traffic lane markings. The court suspended her driver's license and ordered her to complete driver safety classes. She completed the classes, as ordered, and her license has been restored. (Tr. 19)

Per Applicant, these episodes of drinking and driving were the result of poor stress management rather than a drinking problem. Specifically, when the first arrest occurred, Applicant had just finished college and had yet to find a full-time job, and was getting discouraged. She attributes the second arrest to a failure to balance her rigorous job duties with the task of planning her wedding. (Tr. 19) Currently, Applicant drinks primarily at home and avoids "mixing it with business." (Tr. 19) When she does drink outside of the home socially, she uses public transportation or cabs to get home. (Tr. 20)

In April 2016, Applicant voluntarily attended counseling. After four sessions, the counselor concluded that Applicant was not alcohol dependent, but that "the two incidents . . . denoted poor judgment and that by definition [constituted] alcohol abuse in isolated events, with no clinical concern that the patient's pattern of drinking will lead to

dependence.” (AE P) He advised her that there was no need for her to engage in any further counseling. (AE P)

Applicant has been promoted three times since beginning her job in 2009. (Tr. 22) Now a supervisor, she is able to control work-related stress by delegating more of her tasks. (Tr. 22) Also, her stress is further controlled because her schedule is more family-friendly than it was previously, as she now teleworks three days per week. (Tr. 23)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(a), 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.”

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 security clearance.

Analysis

Guideline G, Alcohol Consumption

Under this guideline, “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 ¶ 21). Applicant’s history of alcohol-related criminal offenses triggers the application of AG ¶¶ 22(a), “alcohol-related incidents away from work, such as driving under the influence . . .,” and 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.” Applicant’s counselor’s diagnosis of alcohol abuse triggers the application of AG ¶ 22(e), “evaluation of alcohol abuse . . . by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.”

The following mitigating conditions under AG ¶ 23(a) are potentially applicable:

- (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).

Applicant's last alcohol-related offense occurred fairly recently. However, six years elapsed between Applicant's two alcohol-related crimes, she complied with the court orders on both occasions, she voluntarily sought counseling after the second arrest, and her counselor told her after the fourth session that she had no current alcohol problem, and did not need any further counseling. AG ¶ 23(a) and AG ¶ 23(b) 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.

Applicant's first alcohol-related arrest was partially attributable to immaturity, as she was a 24-year-old, recent college graduate when it occurred. Since then, she has gained a job and her career has thrived, as her employer has promoted her three times. Moreover, she has completed a master's degree, gotten married, and legally adopted her stepchild. These facts, together with her proactive decision to consult a counselor, and her outstanding character references compel me to conclude that she has mitigated the security concerns.

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: FOR APPLICANT

Subparagraphs 1.a-1.b: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge