



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



In the matter of:)
)
) ISCR Case No. 15-06555
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro Se*

08/08/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant experienced financial issues and alcohol problems after her divorce. She made a good faith effort to pay or resolve her debts, and mitigated the financial considerations security concerns. She took steps to curtail her alcohol issues, and they are unlikely to recur. She mitigated the alcohol involvement security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 18, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline G, alcohol involvement. The action was taken under Executive Order (Exec. Ord.) 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 implemented by the DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence (DNI) issued Security Executive Agent Directive (SEAD) 4, National Security Adjudicative Guidelines

(AG). SEAD 4 became effective on June 8, 2017, for all adjudicative decisions on or after that date, including this one.¹ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Applicant responded to the SOR on May 23, 2016. She submitted documents marked as Applicant's Exhibits (AE) A through AE N and requested a written decision in lieu of a hearing. On August 29, 2016, Department Counsel sent Applicant an amendment to the SOR. She responded on October 29, 2016 and requested a hearing. The case was assigned to me on May 12, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 20, 2017, scheduling the hearing for July 10, 2017, by video teleconference, with the agreement of both parties. The hearing was convened as scheduled. Department Counsel offered documents which were marked Government Exhibits (GE) 1 through 7. GE 1, and GE 3 through 7 were admitted into evidence.² GE 2 was not admitted.³ Applicant testified and submitted documents which I marked as AE A through AE W, a sequence following the attachments to her answer. AE A through AE W were admitted without objection.⁴ The record was held open until July 28, 2017 to enable Applicant to submit additional information. Applicant submitted several post-hearing documents which were marked collectively as AE X and admitted without objection.⁵ DOHA received the hearing transcript (Tr.) on July 18, 2017.

Amendment to the SOR

The Government's amendment to the SOR added the following allegation under Guideline G:

- 2.c. You have consumed alcohol, at times to excess and to the point of intoxication, from approximately 1982 through November 2014.

¹ At the hearing, Applicant confirmed that she received a copy of SEAD 4 with the Notice of Hearing. (Tr. 12-14)

² Applicant objected to GE 4, a February 28, 2015 credit report, because it was out of date. Tr. 32-33. She did not object to admission of GE 1, GE 3, GE 5, GE 6, or GE 7.

³ GE 2 is the unauthenticated summary of Applicant's June 8, 2015 background interview, part of her personnel background report of investigation (ROI). Under ¶ E3.1.20, an ROI is admissible only through an authenticating witness. Department Counsel offered GE 2, but Applicant declined to sufficiently authenticate it during my questioning her about it, so GE 2 was not admitted, and I have not considered it. (Tr. 30)

⁴ The pre-hearing e-mail correspondence between myself and the parties concerning scheduling and submission of hearing exhibits is marked as Hearing Exhibit (HE) I, and the Government's discovery letter is marked as HE II.

⁵ On August 4, 2017, Applicant submitted one additional document, which I have included as part of AE X and admitted.

Department Counsel presented the amendment, and Applicant's written response, at the start of the hearing. Applicant denied the allegation and provided a narrative explanation. The SOR was amended without objection. (Tr. 14-18)

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.i, and ¶¶ 2.a-2.b, with explanations and documents. She denied SOR ¶ 2.c. Her admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. She was married from 1995 to 2011, and she remarried in December 2012. She has a 20-year-old daughter from her first marriage. She has a high school education and is pursuing an associate's degree. (Tr. 49-50; GE 1)

Applicant was employed by a large internet company from 2000 to December 2007, when was laid off due to a reduction in force. She was then unemployed until March 2008, when she began working for a defense contractor. She worked there for two years, until she relocated in 2010. She worked for another contractor for almost three years, until she was laid off in February 2013. She was then unemployed until she was hired by her current employer, in August 2013. She has held a secret clearance since January 2009. (Tr. 11, 55-56; GE 1)

Applicant testified that her marriage ended because her husband became abusive. Her financial problems began after her divorce. She was employed in the defense industry at the time but was unable to maintain their home on her salary alone after he moved out. She left her job and moved in with her mother, who lives in another part of the state. (Tr. 51-52)

Applicant submitted a security clearance application (SCA) in February 2015. (GE 1). She disclosed SOR debts ¶¶ 1.a and 1.e. (GE 1 at 37-39). The nine debts alleged in the SOR total about \$18,070. All are listed on Applicant's February 2015 credit report. Three of the debts (SOR ¶¶ 1.a, 1.b and 1.d) are listed on her February 2016 credit report. (GE 4, GE 5)

SOR ¶ 1.a is a \$1,588 judgment issued against Applicant in December 2013 in favor of a university. (GE 4) She signed up for a class while working for a previous employer. She believed her employer was going to pay for the class but they did not do so. Applicant was not able to take the class because her father was in a car accident. He died two months later. (Tr. at 52; GE 1 at 38). The debt has now been paid. (AE P)

SOR ¶ 1.b is a \$2,237 judgment issued against Applicant in April 2010 by a collection agency for a retail store. The debt concerns a household appliance. Applicant testified that the store took the appliance back when it was discovered that it would not fit in her kitchen. She did not receive any paperwork regarding the appliance showing whether she owed anything on it after it was returned. Applicant contacted the creditor after the hearing and paid \$2,619 to settle the account. (Tr. 58-63; AE B, AE X)

SOR ¶¶ 1.c (\$172) and 1.g (\$1,657) are medical debts in collection. The creditors are not specifically identified on Applicant's credit reports. She admitted each debt in her answer but also wrote letters to the major credit bureaus indicating that she had no information from her local hospital that she owed them any money (AE C, AE G). Applicant became aware during her testimony that these debts became past due before she relocated, so she had been trying to resolve them with the wrong hospital. (Tr. 65-66; 71-74) After the hearing, she settled SOR ¶ 1.g for \$1,172. She was unable to verify SOR ¶ 1.c. (AE X)

SOR ¶1.d is a \$601 debt in collection to a phone company. (GE 4) Applicant settled the debt in May 2016 for \$300. (AE D) She testified that she still has an account with the same phone company, and it is current. (Tr. 67)

SOR ¶ 1.e is a \$3,681 charged-off debt to a credit card company. Applicant paid the debt in September 2014. (GE 4, GE 5, AE E).

SOR ¶ 1.f is a past due debt of \$7,577 related to the mortgage on the home Applicant owned with her first husband. (GE 4) She provided a letter from the creditor showing a zero balance on the account, as of May 2016. (AE F)

SOR ¶¶ 1.h (\$417) and 1.i (\$140) are medical debts in collection. (GE 4). When Applicant sought to resolve the debts with the creditors, she was told the accounts were closed and no longer collectible under the state statute of limitations. (Tr. 75-76; AE H, AE I). Applicant provided documentation after the hearing that the debts have now been paid. (AE X)

Applicant's current annual salary is about \$80,000. Her husband works for a nearby university. His annual salary is about \$50,000. They own their home and are current on their \$798 monthly mortgage. She testified that she has no other delinquent debts beyond those in the SOR. She has two credit cards with small balances. She pays them off each month to build up her credit. She is current on her monthly car payments of \$335. Applicant and her husband maintain a monthly budget and monitor it closely. She described her husband as a "wizard with finances." She testified that they follow the budget approach of Dave Ramsey, and try to have money set aside for anything bought on credit so they can pay it off. They also have a financial advisor. Applicant testified that she has about \$1,000 in her checking account and about \$5,000 in savings. She has about \$25,900 in her employer's 401k plan. Her taxes are current. (Tr. 97-103, 124; AE T, AE U)

Guideline G

Applicant first consumed alcohol in high school, in about 1982. She also consumed alcohol in college. She testified that her first husband and his family, who are French, drank alcohol with their meals often. She did not consume alcohol during her first marriage (1995-2011), in part because she wanted a child. She began drinking to excess when living with her mother after her divorce. She would drink wine at home, often when she was alone. (Tr. 51, 104-106; Answer to SOR Amendment)

In September 2014, Applicant was arrested and charged with driving while intoxicated (DWI). (SOR ¶ 2.a) She had consumed three or four glasses of wine on an empty stomach at home before driving. She went to an airport about an hour away from her home to pick up a friend. She was pulled over after she drove over a curb. She was arrested after a sobriety test showed her blood alcohol level was about 0.15. (Tr. 78-80. GE 3, GE 7)

In November 2014, Applicant went to a college football game with friends. During pregame tailgating, she was offered a large alcoholic mixed drink, which she consumed on an empty stomach. She was intoxicated by the time she entered the stadium, and the police asked her to leave. She scuffled with a policewoman, and she was then taken into custody. Because she was uncooperative, she was ordered held in jail for three days before her bond hearing. (Tr. 84-86; 112-113; GE 1)

Applicant was charged with felony assault on a police officer and public intoxication. (SOR ¶ 2.b) In March 2015, she pleaded guilty to a reduced misdemeanor assault charge and was sentenced to 12 months' probation. The public intoxication charge was dismissed. (GE 3; GE 7; AE K)

At the time of her second arrest, Applicant was awaiting trial for the DWI charge. She acknowledged at hearing that she had been given paperwork in court indicating that she was not allowed to drink alcohol while her criminal case was pending. (Tr. 111-112).

For the DWI, Applicant received a 180-day suspended jail sentence and 12 months of probation, from March 2015 to March 2016. Her driver's license was also suspended for 12 months, from November 2014 to November 2015. She had an interlock ignition device for six months. She was also ordered to attend an alcohol safety awareness program. In March 2016, Applicant successfully completed probation for both offenses. (Tr. 110-114; AE J, AE N; GE 1; GE 7)

At the time of her offenses, Applicant was also taking a prescription medication. She did not believe the medication was working, so she asked her doctor to reduce the dosage. By the time of the second arrest, she had stopped taking it altogether. Applicant believed the medication had an impact on her tolerance for alcohol. Applicant told her doctor about her two arrests, and went back on the medication. She now knows not to consume alcohol when she is taking the medication. (Answer; Tr. 107-110)

Beginning in January 2015, Applicant attended Alcoholics Anonymous (AA) for about 18 months. She stopped going because she found it was not working for her. She has also worked with and mentored other women with alcohol issues in a similar 12-step program that she has found more useful. (Tr. 87-89, 115; AE J, AE K) She also attends church regularly and has found value in continuing with pastoral counseling there. (Tr. 114-115; AE M)

Since her arrests, Applicant has significantly curtailed her alcohol consumption. In recent months, she had a beer at a baseball game and a glass of wine at a concert.

Her tolerance for alcohol has lessened, and Applicant believes it now takes less alcohol than it used to for her to become intoxicated. (Tr. 114-119)

Applicant recognized that her alcohol consumption was “poor judgment on my part, especially [while] holding a clearance.” (Tr. 48) She considers that her arrests and the clearance hearing process have been a “life-changing event” that affected both her family and herself. (Tr. 48) She took to heart her probation officer’s advice that she had too much to lose if she did not reform. (Tr. 91; AE K; Answer to Amendment) There is no indication that Applicant was formally diagnosed as having an alcohol use disorder.

Applicant’s husband testified that she has made great strides in curbing her drinking and improving her finances. (Tr. 123-127) A close friend testified that she called Applicant to care for her children and baby granddaughter in the middle of the night when the friend had a family emergency, and that she considers Applicant trustworthy and reliable. (Tr. 130)

A former co-worker attested to Applicant’s professionalism and leadership skills as a mentor. Her minister wrote that Applicant was respectful of privacy, sensitive information, as well as rules and regulations. She is a trusted leader and mentor in her church community, and is reliable and trustworthy. (AE L, AE M).

Policies

It is well established that no one has a right to a security clearance.⁶ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁷

The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security.” Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or

⁶ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

⁷ 484 U.S. at 531.

proven by Department Counsel.” The applicant 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant incurred delinquent debts after her divorce. Her debts are sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant's financial difficulties are directly linked to her divorce. This was a circumstance beyond her control. She left her job, and moved to a new location with her daughter. She moved in with her mother and began a new life. It took Applicant some time to pay or resolve her debts, but she undertook responsible action to pay them, and she provided extensive documentation of her efforts to do so. All of her SOR debts have now been paid except for SOR ¶ 1.c, a small medical debt she was unable to verify. AG ¶¶ 20(b) and 20(d) both apply.

Applicant receives and follows financial advice from reputable sources. She and her husband have a budget that they follow closely. Her delinquent debts are resolved. Her financial problems are unlikely to recur and no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) apply.

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set forth in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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 the frequency of the individual's

alcohol use or whether the individual has been diagnosed with an alcohol use disorder; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant had no history of excessive alcohol consumption until after her divorce. She began drinking alcohol to excess after she divorced and moved in with her mother, in another part of the state. She was arrested twice during a three-month period in the fall of 2014. Both offenses came after she drank alcohol to excess, on an empty stomach.

In September 2014, she was arrested for DUI. While that court case was pending, and while she was under court orders not to consume alcohol, she became intoxicated and belligerent at a college football game, in November 2014. She had a physical altercation with police, and was charged with felony assault on a police officer and public intoxication. The felony charge was later reduced to a misdemeanor, and the public intoxication charge was dismissed. The above AGs both apply.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following 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 judgment; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant began drinking alcohol to excess after her divorce, when she and her daughter moved in with her mother. Her drinking continued after she remarried. She had two alcohol-related arrests within a three-month period in the fall of 2014. Both were similar incidents, in that she exercised poor judgment by drinking to excess on an empty stomach. However, she completed the required alcohol safety awareness class and successfully completed the one-year probation period. She was "scared straight" by the experience of her arrests and recognizes that she had too much to lose if she did not alter her behavior. She participated in Alcoholics Anonymous for 18 months, and has continued to participate in similar programs. She also pursues pastoral counseling through her church. She has significantly curtailed her drinking. She now drinks only rarely, and to moderation.

Applicant's arrests occurred during an isolated period in her life. There is no evidence that she engaged in similar behavior before the fall of 2014, or since. She

acknowledged her behavior and the poor behavior which led to it, and took steps to change. Her two arrests occurred almost three years ago. She has altered her behavior significantly and there is little risk of recurrence. AG ¶¶ 23 (a) and 23 (b) apply to mitigate the alcohol involvement security concerns.

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(c):

(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 have incorporated my comments under Guideline F and Guideline G in my whole-person analysis.

Applicant experienced financial and alcohol problems after her divorce. She undertook reasonable, good-faith efforts to pay and resolve her debts. Her financial problems are unlikely to recur. I observed her demeanor during the hearing and found her to be a credible witness. She recognizes the seriousness of her actions, and realizes that she has much to lose if she does not continue to guard against further alcohol problems in the future. Her alcohol issues occurred during an isolated period in her life and she has taken significant steps to prevent them from recurring.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under both financial considerations and alcohol involvement. Eligibility for access to classified information is granted.

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 F: FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

Paragraph 2, Guideline G: FOR APPLICANT

Subparagraphs 2.a-2.c: For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge