



**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. 15-08047

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

08/07/2018

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided sufficient evidence to mitigate security concerns for alcohol consumption under Guideline G, criminal conduct under Guideline J, and personal conduct under Guideline E. Eligibility for access to classified information is granted.

Statement of the Case

On August 13, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 3) On September 18, 2015, Applicant was interviewed by a security investigator from the Office of Personnel Management. (Item 5, Personal Subject Interview (PSI)). Applicant verified the accuracy of the PSI on June 23, 2016. (Item 5) After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 13, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing two allegations of security concerns for personal conduct under Guideline E, two allegation of security concern for alcohol consumption under Guideline

¹ The SOR was issued to Applicant in her maiden name, . She married on September 2, 2016, and now uses her married name .

G, and one allegation of criminal conduct under Guideline J. (Item 1) 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) effective in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.²

Applicant answered the SOR on November 4, 2016. She admitted all of the security concern allegations. She requested that the matter be decided on the written record. (Item 2) Department Counsel submitted the Government's written case on November 13, 2017. (Item 6) Applicant received a complete file of relevant material (FORM) on November 30, 2016. Applicant was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. (Item 7) Applicant responded to the FORM on January 10, 2017. (Item 8) On January 27, 2017, Department Counsel noted that she had no objection to consideration of Applicant's reply to the FORM. (Item 9) I was assigned the case on March 12, 2018.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 38 years old. She graduated from high school in June 1995 and had some college courses. She married in September 2016. Applicant entered active duty in the U.S. Navy in November 1995, and received an honorable discharge in January 2010. She was granted access to classified information in November 1995. She was unemployed from January 2010 until June 2010 when she was employed in a 911 center. She left the 911 center in March 2011 to accept employment as an administrative assistant for a defense contractor. She continued that employment until she became a senior administrative assistant in May 2015 for her present defense contractor employer. (Item 3, e-QIP; Item 5, PSI)

The SOR alleges that in response to questions on the e-QIP concerning her police record in the last seven years and offenses involving alcohol, she did not report that she was convicted of driving while intoxicated (DWI) in both March 2011 and June 2012. The convictions and her failure to report them led to the alcohol consumption, criminal conduct, and personal conduct security concerns.

Court records show, and Applicant admits, that she was arrested on March 1, 2011 for DWI. Applicant was driving home from a bar after consuming alcohol when she was stopped by police for speeding. She failed field sobriety and breathalyzer tests. Applicant was convicted of the misdemeanor offense of DWI on May 5, 2011, and sentenced to an \$800 fine, two days confinement, 12 months of probation, and five days of community service. Applicant completed all aspects of the sentence.

² I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case was considered under the previous AGs.

Applicant consumed about four beers at a bar on June 10, 2012. Applicant admits driving after leaving the bar. Applicant admits that she was stopped for crossing the center line and that she failed a breathalyzer test. Court records show and Applicant admits that she was charged with DWI, but convicted of reckless driving. She was fined \$1,000 and placed on probation for 12 months. She paid the fine and was released from probation after serving approximately nine months of probation. (Item 4, Court Records; Item 5, PSI)

Applicant started drinking alcohol at age 22. She drank socially on the weekends consuming about 3 to 5 beers on some week ends. She would become intoxicated about 2 or 3 times a year, usually after consuming about seven beers. She defines intoxication as having a blurred memory. Alcohol has no effect on her behavior. She has never been treated for alcohol abuse. She does not intend to abuse alcohol in the future. (Item 5, PSI at 4) Under state law, Applicant was required to successfully complete a DWI alcohol and drug use risk reduction program from a certified program. In her response to the SOR, Applicant provided documentation that she completed the required clinical evaluations and DWI alcohol use risk reduction programs after each of her DWI convictions. As part of her sentence, she was required to attend and provide documents to show that she completed a Mothers Against Drunk Driving (MADD) victim impact panel program. (Item 2, Response to SOR, certificates)

Applicant admits she did not make responsible choices concerning alcohol consumption in 2011 and 2012. She was transitioning between jobs and she was not certain of her future. She completed the alcohol and driving awareness classes and a MADD victim impact course. She performed community service for a theater group, and now volunteers for the theater group as the publicity manager and a member of the board of directors of the theater group. She returned to school and is taking courses to be a paralegal. She married in September 2016. Applicant now has the support she needs to manage the stressors in her life. She acknowledged her problems with alcohol abuse and has been more responsible concerning her use of alcohol. While Applicant still consumes alcohol, she has not had any alcohol-related issues since June 2012. (Item 2, Response to SOR)

Applicant related in her response to the SOR that she provided detailed information at the PSI concerning her responses to the criminal history questions on the e-QIP. She stated that she did not deliberately provide false information on the e-QIP. She did not fully understand the criminal history questions on the e-QIP. She did not know if she needed to report the DWI offense that was reduced to reckless driving. Applicant said that she cooperated with the security investigator and provided full and complete answers to all of his questions. She does not have a history or pattern of dishonesty or rules violations. (Item 2)

In her response to the FORM, Applicant again pointed out that she provided the security investigator with full and complete information. She did not understand or comprehend the questions on the e-QIP relating to her criminal history. She was unaware whether her convictions were at the state or federal level. She was confused,

and did not know if the convictions and sentences were sealed, expunged or dismissed. At the PSI, she did not hide any information, but fully informed the investigator of her confusion. She provide information on the charges without being prompted by the investigator. She provided him with clear and complete information concerning the potential personal conduct offenses since by then she understood the questions and issues, and she was no longer confused. (Item 9)

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 and mitigating conditions, which must be considered 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 national security eligibility 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.

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 for obtaining 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

Alcohol Consumption

Excessive alcohol consumption is a security concern because it 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 admits that she was arrested and convicted of driving under the influence of alcohol in March 2011 and again in June 2012. Her alcohol-related arrests are sufficient to establish the following Alcohol Consumption Disqualifying Conditions under AG ¶ 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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

23: I considered the following Alcohol Consumption Mitigating Conditions under AG ¶

(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 pattern of maladaptive alcohol use, provides evidence of action taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of an alcohol issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

The mitigating conditions apply. Applicant admits her alcohol-related arrests and convictions. The admissions are an important step forward in mitigating her alcohol-related problems. The excessive alcohol consumptions leading to the DWIs happened over six and seven years ago. Applicant completed all parts of both sentences including attendance at two alcohol and driving awareness classes, and a MADD victim impact course. She performed community service for a theater group, and now volunteers as the theater group's publicity manager and as a member of the board of directors. Applicant returned to school and is taking courses to be a paralegal. She married in September 2016. Applicant now has the support she needs to manage the stressors in her life. She acknowledged her problems with alcohol abuse, and reports she has been more responsible concerning her use of alcohol. She has not had any alcohol-related incident or issue since June 2012.

Applicant presented evidence to establish a pattern of responsible alcohol consumption. She showed sufficient evidence of action taken to overcome her alcohol consumption problems. While she admits that she continues to consume alcohol, her consumption has been moderate and within acceptable levels. Accordingly, Applicant presented sufficient evidence to show a change of circumstance. She established that she can now control her alcohol consumption impulses. She presented information leading to a favorable opinion of her reliability and trustworthiness. The evidence shows that Applicant has reformed or been rehabilitated. I find that Applicant mitigated alcohol consumption security concerns.

Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigation and adjudicative process. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

Applicant was convicted in 2011 and 2012 of DWI. In response to police record questions on her August 13, 2015 e-QIP, Applicant responded "no" to the questions asking if in the last seven years she had been charged, convicted or sentenced for any crime in any court; and had she ever been charged with an offense involving alcohol or

drugs. Applicant's incorrect responses to the questions raises the Personal Conduct Disqualifying Condition at AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities).

I considered the following Personal Conduct Mitigating Conditions under AG ¶17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advise of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressor, circumstances, or factors that contributed to untrustworthy, unreliable, or other appropriate behavior, and such behavior is unlikely to recur.

The mitigating conditions apply. Since the security clearance process relies on an applicant providing correct information, Applicant's action in providing false information is not a minor offense. The personal conduct security concern is that Applicant "deliberately" did not provide correct, true, and accurate information. Applicant denies that she deliberately provided false information on the e-QIP. She pointed out that she did not fully understand or comprehend the criminal history questions on the e-QIP. She did not know if she needed to report the DWI offense that was reduced to reckless driving. She was not aware whether her convictions were at the state or federal level. She did not know if the convictions and sentences were sealed, expunged, or dismissed.

She fully informed the investigator of her confusion. She did not hide any information from him at the PSI. She cooperated with the security investigator and provided correct, clear, and complete information without being prompted. She cooperated with the security investigator since by then she understood the questions and issues, and she was no longer confused. The record shows that she made an adequate effort to tell a consistent, straight, truthful story to the investigator. The

information concerning her alcohol use is accurate because it came directly from Applicant.

Criminal Conduct

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 (AG ¶ 30). Applicant's admissions and criminal justice reports verify her criminal offenses. The information raising alcohol consumption and personal conduct security concerns are also alleged as criminal conduct security concerns. Applicant's conduct causing criminal conduct security concerns are explicitly covered under alcohol consumption and personal conduct. The Guideline J concerns constitute a duplication of the concerns under Guidelines G and E. As noted above, the facts are insufficient to find alcohol consumption and personal conduct security concerns and do not warrant revocation of Appellant's security clearance. Accordingly, criminal conduct security concerns are found for Applicant.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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(d):

(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 access to classified information must be an overall common-sense 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. Applicant admitted the DWI offenses. She denied deliberately failing to provide full and correct information on her e-QIP. Applicant provided enough details about what she did to address her alcohol consumption problems. She provided sufficient evidence and documentation that she worked diligently and resolved her alcohol problems. There is sufficient assurance that her alcohol-related problems are resolved, under control, and will not recur in the future.

Her strong, reasonable, and responsible actions towards her alcohol issues are an indication that she will protect and safeguard classified or sensitive information. She sufficiently explained her responses on the e-QIP to establish that she did not deliberately provide false or incorrect information.

Applicant adequately provided facts to mitigate the security concerns. In short, the file contains sufficient evidence to establish that she made adequate efforts to mitigate alcohol consumption and personal conduct issues as well as criminal conduct issues. Her actions to overcome alcohol consumption issues and her efforts to provide accurate information on her security clearance application are firm indications that she will adequately safeguard classified information. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. Applicant established her suitability for access to classified information. For all these reasons, I conclude Appellant mitigated the alcohol, personal conduct, and criminal conduct security concerns. 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 E: FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

Paragraph 2, Guideline G: FOR APPLICANT

Subparagraphs 2.a – 2.b: For Applicant

Paragraph 3, Guideline J: FOR APPLICANT

Subparagraphs 3.a: 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.

THOMAS M. CREAN
Administrative Judge