



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



In the matter of:

ISCR Case No. 16-01799

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: Ryan Nerney, Esq.

November 1, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

This case involves security concerns raised under Guideline G, Alcohol Consumption. Eligibility for access to classified information is denied.

Statement of the Case

On December 5, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline G.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on December 30, 2016, and requested a decision based on the written record. On March 23, 2017, Applicant requested a hearing before

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

an administrative judge. (Answer.) On April 25, 2017, Applicant's counsel entered a notice of appearance. The case was assigned to another administrative judge on April 24, 2017, and then transferred to me on April 27, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 3, 2017, scheduling the hearing for July 25, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on her own behalf and called one witness. Applicant presented seven documents, which I marked Applicant's Exhibits (AE) A through G. The record was left open until August 1, 2017, for receipt of additional documentation. On July 26, 2017, Applicant presented AE H, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 2, 2017.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.b, and 1.c. She denied SOR allegation ¶ 1.d. (Answer; Tr. 7.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 61-year-old employee of a defense contractor. She has been working for her current employer, for eight years. She has held a security clearance for approximately ten years. She is divorced from two former husbands, and has two adult children. (GE 1; Tr. 31-34, 57.)

Applicant admitted that she was arrested in January 2002 and charged with Wet Reckless. She had a blood alcohol content of .09% when she was arrested. On this occasion, she was drinking alcohol at a bar celebrating her birthday with her friends. She testified she quit drinking several hours prior to attempting to drive home. She testified that as a result of this charge, she attended alcohol education classes and paid fines. (GE 1; Tr. 35, 37.)

Applicant first started drinking alcohol in high school. Her alcohol intake increased in approximately 2012, after she learned disturbing news about her fiancée's past. (Tr. 35-36.) During a three-month period, she typically consumed half of a pint of vodka per day. On one occasion, Applicant "drank [herself] into a blackout . . . and apparently picked up a gun and called [her] best friend . . . and told her [friend] that [Applicant] wanted to end [her] life." (Tr. 59.) Applicant attended inpatient alcohol treatment for two weeks between May 2012 and June 2012, after her son approached her and expressed concerns about her drinking. During her treatment, she was diagnosed with Alcohol Dependence. (GE 3.) After discharge, she was recommended to abstain from alcohol use and attend recovery program meetings. She attended those meetings and abstained from alcohol use for "several months," but, "foolishly thought [she] could learn how to drink and control it and drink in moderation." (Tr. 40-41.) However, her alcohol consumption gradually increased. (Tr. 38-42.)

Applicant attended a 12-week outpatient alcohol treatment program from May 2015 to July 2015.² She successfully completed that program. It met three nights a week for three hours each meeting. She was again diagnosed with Alcohol Dependence. (GE 3.) She indicated she sought treatment the second time because, she “would have long periods where [she] would drink for days, a couple of binges. Missed a couple of days of work and realized [she] needed to get [her] act together.” (Tr. 43.) As a result of this outpatient treatment, Applicant acknowledged that she did have “an alcohol problem.” (Tr. 44.) She had one relapse during this treatment program. At the conclusion of treatment, it was recommended that she abstain from future alcohol use. (GE 6; AE C; AE F; Tr. 42-45, 60-65.)

Applicant acknowledged that she has had “a couple slips” after completing the second out-patient treatment program. (Tr. 46.) She testified, “There were, I don’t know maybe three or four times when I would drink for a day or two. And then get my head out of a dark place and get back on track again.” (Tr. 46.) She testified that she consumed alcohol at Thanksgiving in November 2015, after she felt stressed by a visit from her mother. The last time she consumed alcohol was in January 2016. She consumed alcohol on that occasion due to receiving an upsetting email from her daughter. (AE F; Tr. 46-47.)

After her most recent consumption of alcohol in in January 2016,³ Applicant made a commitment to herself to attend seven support meetings per week, for a year. She also went into therapy with a licensed psychologist. Her psychologist indicated in a December 2016 letter that Applicant last drank on January 17, 2016. The psychologist opined that Applicant is “very committed to her recovery.” (AE A.) Applicant currently attends five support meetings per week and is no longer seeing the psychologist. (Tr. 48-56, 66.) She is committed to a sober life and has “learned that stress isn’t going to kill [her].” (AE F; Tr. 45, 51, 66-67.) Applicant submitted a signed statement of intent indicating she will not use or consume alcohol again. (AE H.)

Applicant’s former boss, who is Chief Executive Officer of her company, testified on her behalf. He indicated Applicant is an honest, dedicated employee. He testified that Applicant has been forthcoming with him about her alcohol problem. He has no reservations with Applicant having access to classified information. (Tr. 25-30.) Applicant also presented multiple, highly laudatory, letters of recommendation from co-workers and members of her support groups. They all highlighted Applicant’s integrity, honesty, and trustworthiness. (AE G.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list

² SOR ¶ 1.c was amended at hearing to correct the treatment dates from “May 2015 to July 2016” to “May 2015, to July 2015.” (Tr. 72.)

³ Applicant was unable to recall the exact sobriety date. (Tr. 70.)

potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. 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 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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."

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[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." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline G: Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Three conditions apply:

- (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;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.

Applicant was arrested and charged with Wet Reckless in 2002. She has received inpatient alcohol treatment in 2012 and outpatient treatment in 2015. She was diagnosed with Alcohol Dependence during both programs. Alcohol Dependence was later incorporated in the diagnosis "Alcohol Use Disorder" in the most recent version of the Diagnostics and Statistical Manual for Mental Disorders IV. All of the above conditions apply.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

- (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;
- (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; 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.

Applicant has made significant strides in overcoming her alcohol dependency. She regularly attends support groups and sought therapy. She has learned to manage her stress. She has completed two separate rehabilitation programs. Despite her participation in those programs, she relapsed or “slipped” after both. She has not consumed alcohol since January 17, 2016. However, she has not demonstrated a sufficient period of sobriety at the present time to demonstrate a clear pattern of abstinence. None of the above conditions provide full mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by those that know her professionally. Additionally, she has the trust and support of friends in her recovery support groups. Since January 2016 she has been sober and has demonstrated that she is committed toward sobriety. However, her long history of alcohol dependence at an advanced age leaves me with questions and doubts as to Applicant’s propensity for relapse. It casts doubt on her eligibility and suitability for a security clearance at the present time. Should she maintain her sobriety, she may be eligible for a security clearance in the future, but it is too soon to tell whether Applicant will be able to abstain from alcohol for an extended period of time. For all these reasons, I conclude Applicant failed to mitigate the alcohol consumption security concerns.

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge