



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



In the matter of:

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ISCR Case No. 17-00087

Applicant for Security Clearance

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

11/22/2017

Decision

Curry, Marc E., Administrative Judge:

Applicant is currently on probation stemming from a conviction for driving under the influence of alcohol (DUI) in 2016. Consequently, it is too soon to conclude that she has mitigated the alcohol consumption security concern. Clearance is denied.

Statement of the Case

On February 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G, and explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On April 5, 2017, Applicant answered the SOR, admitting all of the allegations, and requested a decision based on the written record instead of a hearing. On May 5, 2017,

Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on May 31, 2017, and did not respond. The case was assigned to me on October 19, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Evidentiary Ruling

Item 3 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on August 6, 2016. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

Findings of Fact

Applicant is a 30-year-old single woman. She earned a bachelor's degree in 2009. Since January 2015, she has been working for a defense contractor as a control center specialist. (Item 1 at 9)

Applicant is highly respected on the job. A co-worker characterizes her as "profoundly responsible [and] reliable, and exhibits sound judgment in a consistent basis." (Item 1 at 13) According to Applicant's supervisor, she is a "strong team player" who is reliable and dependable. (Item 1 at 15) She was recently promoted in February 2017. (Item 1 at 6)

In September 2013, Applicant was arrested and charged with DUI. After pleading no contest, she was found guilty of a lesser charge and sentenced to 36 months of probation, fined \$1,814, ordered to complete a three-month alcohol program, and ordered to completed 25 months of community service. (Item 1 at 2) Applicant completed the alcohol program and the community service, as required.

In July 2015, Applicant was again arrested and charged with DUI. In May 2016, she pleaded no contest. The following month, the court convicted her, and ordered her to spend four days in jail for violating probation related to the 2013 conviction. In addition, the court ordered her to attend an alcohol program for 18 months, and extended her probation for another four years. (Item 1 at 3) As of March 2017, she was in compliance with the rules and policies of the rehabilitation center. (Item 1 at 5) She no longer drinks and drives, and has had no arrests since the 2015 episode.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).²

Analysis

Guideline F, 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

² The factors under AG ¶ 2(d) are as follows:

(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.

arrests triggers the application of AG ¶¶ 22(a), “alcohol-related incidents away from work, such as driving while under the influence . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.” Applicant’s second DUI arrest constituted a violation of probation, therefore, AG ¶ 22(g), “failure to follow any court order regarding alcohol education, evaluation, treatment or abstinence,” applies.

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

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

(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.

There is evidence that each of these mitigating conditions are applicable, as Applicant acknowledges her pattern of maladaptive alcohol use that led to the repeated DUI arrests. In addition, she has been actively participating in an alcohol-education class, as the court ordered after her 2015 arrest and conviction. However, she remains on probation. Under these circumstances, it is too soon to conclude that her alcohol consumption no longer casts doubt about her current reliability, trustworthiness, or good judgment. Applicant has not mitigated the alcohol consumption security concern.

Whole-Person Concept

Applicant’s strong character references certainly weigh in her favor. Her answer to the FORM was contrite and introspective. Nevertheless, the state court is still monitoring her behavior through a probation order. Under these circumstances, it is too soon to grant her the privilege of holding a security clearance.

Formal Findings

Formal findings for 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:

AGAINST APPLICANT

Subparagraphs 1.a – 1.b:

Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge