



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 17-02139

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2018

**Decision**

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to overcome the security concerns raised by the Government's adverse information about Applicant's use of alcohol and related criminal conduct. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant has worked for defense contractors in positions that require a security clearance since November 2000. On January 23, 2013, she submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew her eligibility for access to classified information. On January 27, 2016, her employer submitted an adverse information report to the Joint Personnel Adjudications System (JPAS). After reviewing information related to the JPAS report, as well as information obtained in previous background investigations, adjudicators at the Department of Defense Consolidated

Adjudications Facility (DOD CAF) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.<sup>1</sup>

On June 27, 2017, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guidelines G (Alcohol Consumption) and J (Criminal Conduct).<sup>2</sup>

Applicant responded to the SOR (Answer) and requested a decision without a hearing. On September 29, 2017, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on October 11, 2017, and had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.<sup>4</sup> Applicant timely responded to the FORM and the record closed on November 16, 2017. Neither party objected to submissions by the other. I received this case for decision on March 1, 2018.

### Findings of Fact

Under Guideline G, the SOR alleged that in July 2005, Applicant was arrested and charged with driving under the influence (DUI) of alcohol, for which she later was placed on two years probation as part of a plea agreement (SOR 1.a). Additionally, it was alleged that in December 2012, Applicant was charged with DUI, driving while intoxicated (DWI), negligent driving, driving without headlights while operating wipers, failure to control her vehicle, and driving on an expired license. The SOR stated she was found not guilty of all charges in March 2013 (SOR 1.b). The SOR further alleged that in June 2015, Applicant was charged with possession of a dangerous substance (Oxycontin), resisting arrest, and driving or attempting to drive while impaired by alcohol, all of which were entered as *nolle prosequi* except for resisting arrest, to which Applicant pleaded guilty in January 2016 and was placed on probation before judgment for one year (SOR 1.c). The SOR cross-alleged the Guideline G allegations as criminal conduct under Guideline J (SOR 2.a). (FORM, Item 1)

Applicant admitted that the arrests occurred as alleged in the SOR. She had previously disclosed her 2005 and 2012 arrests in her 2013 e-QIP. She also discussed those arrests and her use of alcohol during personal subject interviews (PSI) conducted by government investigators on February 27, 2013 and on April 24, 2017. The latter interview took place as part of a background investigation subsequent to the January 2016 JPAS report. Information in that report came from Applicant, who self-reported her

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

<sup>2</sup> See Directive, Enclosure 2. Adjudicators applied the adjudicative guidelines (AG) implemented on December 10, 2016 by the Director of National Intelligence (DNI), effective for all security clearance adjudications conducted on or after June 8, 2017.

<sup>3</sup> See Directive, Section E3.1.7. In the FORM, Department Counsel relies on seven enclosed exhibits (Items 1 – 7).

<sup>4</sup> See Directive, Section E3.1.7.

arrests to her employers' facility security officers (FSO). The SOR allegations about Applicant's 2012 and 2015 arrests also are supported by court documents produced by Department Counsel. (FORM, Items 1 – 6)

Although Applicant admitted that she was arrested in 2005, 2012, and 2015 as alleged, she denied that she was intoxicated or had abused alcohol in either the 2012 or 2015 events. As to her 2005 arrest, Applicant admits being intoxicated when she was pulled over. During her 2013 PSI, Applicant stated that she had "several glasses of wine" before getting behind the wheel. On May 11, 2006, Applicant completed a 12-hour alcohol counseling and evaluation course as part of her sentence pursuant to a guilty plea. She was not assessed as being alcohol dependent or an alcohol abuser as a result of the 2005 arrest. In addition to the facts established by the pleadings, by Applicant's admissions in response to the SOR, by her disclosures in her e-QIP and during both PSIs, by the court records produced in the FORM, I make the following findings of fact.

Applicant is 53 years old. She has an associate's degree she earned in 2008. At the time she submitted her e-QIP, she was enrolled in a rigorous DOD course of instruction directly related to her work in support of her DOD customer. Applicant was married from July 1987 until divorcing in November 1998. She has two children, now adults, from that marriage. Applicant has since remarried in April 2016. (FORM, Items 2 and 5)

In December 2012, Applicant was driving home from lunch, where she claims to have had one glass of wine. Applicant also was recovering from a wrist injury and had a prescription for painkillers to be taken as needed. The record is unclear as to whether she had taken any that day. It was raining as she drove home. Applicant had her windshield wipers on but not her headlights as required by state law. As she negotiated a roundabout she lost control of her car and crashed. She suffered several injuries in the crash, including a concussion. At the scene, police officers suspected she was intoxicated and charged her as reflected at SOR 1.b. They did not administer a field sobriety test or a breathalyzer test before arresting her. They did not transport her to a hospital. Applicant went to the emergency room after being released on her own recognizance. After a trial on March 7, 2013, Applicant was convicted of negligent driving and of driving on an expired license. The file does not contain information that shows Applicant was intoxicated or under the influence of any other substance. (FORM, Item 1 (Answer Enclosure 6); Items 2 – 4, and 6)

On June 28, 2015, police stopped Applicant and the person who now is her husband after they left a restaurant. Her husband initially drove from the restaurant but became nervous because he believed someone at the restaurant had called the police to report him as being a drunk driver. He stopped the car in the middle of the road and switched places with Applicant, who then started to drive home. The police eventually pulled her over and arrested her for DWI. In a search incident to arrest, police found what they thought was a single Oxycodone tablet in a Motrin bottle. The pill was actually a Xanax, prescribed for an unrelated condition. While being detained, Applicant kicked an officer in the shin. She claims it was the accidental result of losing her balance as she was being handcuffed. Applicant went to jail and was charged as reflected in SOR 1.c.

After a trial on January 8, 2016, Applicant was given one year of probation before judgment for the resisting arrest charge. The remaining charges were entered *nolle prosequi*. Again, there is no evidence in this file that Applicant was intoxicated. On the recommendation of her attorney, Applicant enrolled in and completed a DWI treatment and counseling program on December 28, 2015. The file does not show that Applicant was evaluated as, or treated for, being addicted to alcohol or being an alcohol abuser. (FORM, Item 1 (including Answer Enclosures 4 and 5), Item 4, Item 5, Item 7)

In response to the SOR, Applicant submitted a memorandum from a licensed clinical alcohol and drug counselor reflecting the results of a substance abuse evaluation conducted in August 2017. That evaluation showed Applicant does not have an identifiable problem with drugs or alcohol. Applicant also presented information that shows she has an excellent reputation in the workplace for honesty and professionalism. Associates who have known Applicant for most of the past 20 years attest to their observations that she does not appear to have an alcohol problem. For her part, Applicant submitted an affidavit attesting to her commitment to avoiding alcohol-related misconduct and criminal conduct with the understanding she would forfeit her clearance upon receipt of any future information. (FORM, Item 1 (including Answer (Enclosures 1, 2, 7, and 8))

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security

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<sup>5</sup> See Directive, 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>7</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>8</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information. A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## **Analysis**

### **Alcohol Consumption**

Available information about Applicant's alcohol-related arrests in 2005, 2012, and 2015 reasonably raise a security concern under Guideline G, expressed at 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.

More specifically, information presented in the FORM requires application of the disqualifying condition at 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.

By contrast, the record evidence as a whole does not show that Applicant is addicted to or that she abuses alcohol. Only Applicant's 2005 DUI arrest is supported by information that she was intoxicated. She was acquitted of her other alcohol-related charges and she has not been diagnosed or evaluated as having any substance abuse problem. Available information requires application of the following mitigating condition at 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

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<sup>7</sup> See Directive, E3.1.14.

<sup>8</sup> See Directive, E3.1.15.

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

cast doubt on the individual's current reliability, trustworthiness, or judgment.

The record established only that Applicant has been charged with alcohol-related misconduct, not that she engaged in any such misconduct. Available information does not show she was intoxicated or had abused alcohol during any but the 2005 arrest addressed in SOR 1.a. I do not agree with Department Counsel's assertion that this record shows "excessive alcohol consumption." (FORM, Section IV, "Argument") While her involvement in the 2012 and 2015 incidents warrants scrutiny, I am unwilling to infer, without more than was presented here, that her alcohol consumption poses a security risk. The security concerns under this guideline are resolved for the Applicant.

### **Criminal Conduct**

Available information supported the allegations that Applicant was arrested three times between 2005 and 2015. Such information reasonably raises a security concern about criminal conduct that is stated at AG ¶ 31:

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.

This record requires application of the following AG ¶ 32 disqualifying conditions:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

As to AG ¶ 32(a), the record evidence as a whole does not reflect a pattern of offenses, but as noted under Guideline G, warrants scrutiny of Applicant's judgment. As to AG ¶ 32(b), available information supports only the charge of DUI in 2005. The remaining charges resulted in acquittal and *nolle prosequi* motions as to the serious charges. Applicant's probation before judgment award in response to the 2015 resisting arrest charge is largely undocumented except for Applicant's explanation that her contact with an arresting officer was accidental. The only other convictions were the 2005 driving on an expired license, and the 2013 negligent driving, both minor offenses.

By contrast, the record also requires application of the following AG ¶ 33 mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(c) no reliable evidence to support that the individual committed the offense.

It has been 12 years since Applicant committed a serious offense that is fully documented by this record. The common denominator and gravamen of the offenses addressed in the SOR was alcohol use. Based on the discussion under Guideline G, Applicant's use of alcohol is not likely to result in a recurrence of the conduct at issue here. I conclude this record does not present "a long history of alcohol-related arrests" that casts doubt on Applicant's good judgment. The security concerns under this guideline are resolved for Applicant.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines G and J, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant self-reported each incident as required. She also has committed in writing to relinquishing her security clearance in the event of any future misconduct. Applicant provided information that shows she is a mature, responsible employee with an excellent reputation in the workplace. A fair and commonsense assessment of the record evidence as a whole supports a conclusion in favor of the Applicant.

### **Formal Findings**

Formal findings 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.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is granted.

MATTHEW E. MALONE  
Administrative Judge