



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



In the matter of:)
)
) ISCR Case No. 17-03035
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/16/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient information to mitigate the alleged security concerns under Guideline J, criminal conduct, Guideline G, alcohol involvement, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 6, 2016. On November 13, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guideline J, criminal conduct, Guideline G, alcohol involvement, and Guideline E, personal conduct. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on November 30, 2017, and requested a hearing. The case was assigned to me on February 16, 2018. On March 23, 2018, a notice of hearing was issued scheduling the hearing for April 23, 2018. The hearing convened as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through GE 4, which were admitted without objection. Applicant's Exhibits (AE) A through AE C, which were attached to her Answer, were admitted without objection. She also testified. I held the record open to allow Applicant the opportunity to submit additional documentation after the hearing, but she did not do so. DOHA received the hearing transcript (Tr.) on May 3, 2018. The record closed on May 14, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.f, and SOR ¶¶ 2.b-2.f. She "admitted" SOR ¶ 3.b, but with an explanation that I construe as a denial. She did not answer SOR ¶¶ 2.a or 3.a, but since they are cross-allegations of conduct alleged and admitted under SOR ¶ 1, I consider them admitted.¹ 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 33 years old. She has never married. She is a single mother to an 11-year-old daughter. Applicant has a high school diploma and some college credits. Applicant served in the U.S. Navy from 2008 until April 2016, when she received a general discharge under honorable conditions. Her highest rate was petty officer second class. Since May 2016, she has worked for a defense contractor at a naval shipyard. She has held a security clearance since 2012. (Tr. 26-28, 74; GE 1)

Guidelines J & G:

Applicant was first exposed to alcohol at age 16, when she lived in Japan as a U.S. military dependent. She occasionally drank Japanese sodas with some alcohol content. She returned to Japan in 2008, in the Navy. While there, she consumed alcohol to intoxication on weekends. She returned to the U.S. in 2012 with the Navy. (GE 1; GE 2 at p. 5 of Personal Subject Interview (PSI) # 1)

In July 2013,² Applicant and another younger sailor were out socializing in an area club one evening. The other sailor was underage. They argued outside the club, either because Applicant's companion consumed alcohol despite being the designated driver (Tr. 30-31) or because she was seeking to leave the club without Applicant. (GE 2 at PSI # 1). Both of them were put in a "paddy wagon." Applicant was charged with disturbing the peace. (SOR ¶ 1.e) The charge was later dismissed. Applicant

¹ SOR ¶ 2.a (Guideline G) cross-alleges SOR ¶¶ 1.b, 1.c, 1.d and 1.f. SOR ¶ 3.a (Guideline E) cross-alleges SOR ¶¶ 1.a through 1.d.

² SOR ¶ 1.e lists this offense as occurring in July 2014 (GE 1 at 29; GE 2 at p. 4 of PSI) rather than July 2013, as shown by official records. (GE 3; GE 4; AE C)

acknowledged at hearing that she had been drinking. (Tr. 31-32, 66; GE 1; GE 2; GE 3; GE 4; AE C)

In December 2013, Applicant was charged with assault and battery, public intoxication, and destruction of property. (SOR ¶ 1.f)(GE 1; GE 4; AE A; AE B) She testified that this arrest arose out of an altercation with a man whom she called a “fatal attraction.” (Tr. 30-31; 40-41) The nature of their relationship or interactions is not clear from the testimony, but in Applicant’s background interview she said the man followed her into a bar. (GE 2, PSI # 1) She denied at hearing that she had been intoxicated at the time of the arrest, though she acknowledged in her interview that she consumed alcohol that evening. (Tr. 63; GE 2, PSI # 1) Applicant also testified that this man caused her multiple broken bones and other injuries, resulting in several surgeries in 2014-2015. (Tr. 30, 39, 83)

Applicant testified that she was a weekend drinker during this period. She testified that she would drink a glass of wine or a beer at home after work “just to wind down.” (Tr. 63) According to her first PSI, Applicant’s drinking pattern included mixed drinks, such as Long Island Ice Teas. (Tr. 63; GE 2) Later in the hearing, she acknowledged that she drank “a lot” when she was in the Navy. (Tr. 82) Applicant did not specifically acknowledge heavier drinking.

In February 2014, Applicant was admitted to the Navy’s Substance Abuse Recovery Program (SARP) for treatment of alcohol dependence. (GE 2 at 13) Applicant testified that it was an outpatient (Level II) program and that she self-referred. (Tr. 32-33; GE 2 at 13) Both on admission and at discharge, Applicant was diagnosed as suffering from alcohol dependence, (SOR ¶ 2.b) as well as from depression NOS (not otherwise specified) and nicotine dependence. She completed the program in March 2014. (GE 2 at 13)

Program records reflect that the requirements of the aftercare program included participation in Alcoholics Anonymous (AA) at least weekly, and follow-up counseling. She was advised that she should abstain from alcohol. She testified that she completed the one-year aftercare program (Tr. 32-33; GE 2 at 13)

Applicant denied having any problems with alcohol during this period. She testified that, at the time, “when I self-referred myself, [sic] I didn’t see myself as having an issue from the beginning.” (Tr. 45) She attributed her diagnosis of alcohol dependence as being related to the medication she was taking. (Tr. 64-66)

Despite SARP’s advice that she should abstain, Applicant’s drinking continued. (SOR ¶ 2.c) (Tr. 47) In September 2015, Applicant went out to a bar with a friend, in the friend’s car. She consumed alcohol (Long Island Ice Teas, according to her PSI.) (Tr. 66-67; GE 2). The friend had consumed more alcohol, so Applicant was the driver when they left the bar. Applicant was pulled over by police after driving on the wrong side of the road. She was arrested and charged with driving while intoxicated (DWI) (SOR ¶ 1.d) According to her interview summary, Applicant’s blood-alcohol level was 0.14, and according to her charge sheet, it was over .20. (Tr. 33-35, 74-75; GE 2 at PSI # 1; GE 3)

Applicant was found guilty of DWI in December 2015. She was sentenced to 365 days in jail, all but 10 days suspended, and 12 months of probation. She served the jail time on weekends. Her driver's license was restricted for one year, and she was fined. Applicant was also ordered to participate in an alcohol safety-awareness program (ASAP). (Tr. 33-35; 68-69, 74-75; GE 1 at 31; GE 2 at PSI # 1)

In March 2016, Applicant was referred to the Navy's SARP program for 33 days of inpatient treatment for alcohol use disorder, severe (as defined in the updated DSM-V) (SOR ¶ 2.d)³ (GE 2) Applicant testified that inpatient (Level III) treatment was required because she had already been through inpatient (Level II) treatment. (Tr. 42-43, 48; Answer) Applicant also claimed that she self-referred to the program: "I voluntarily went there to save money" as she prepared to transition out of the Navy. (Tr. 48) Applicant was discharged from the SARP program on April 12, 2016. By the end of April 2016, she had been discharged from the Navy. (GE 1; GE 2)

As with her earlier time in SARP, Applicant was advised to abstain from alcohol as part of her aftercare plan in 2016 (GE 2) She was unable to participate in the Navy's aftercare program because she had been discharged. She participated for a time in a civilian alcohol safety-awareness program (ASAP). (GE 2 at PSI # 1) There is no documentary evidence of Applicant's participation in the record.

Between September 2015 and December 2016, Applicant had five interlock violations. (SOR ¶ 1.b) (Tr. 35) In her January 2017 PSI, she admitted that one of them occurred in August 2016 – after her inpatient treatment at SARP in early 2016, when she had again been advised to abstain from future alcohol use. (SOR ¶ 1.e) In August 2016, Applicant was charged with non-compliance with the ASAP program. (SOR ¶ 1.c) (Tr. 38)

In October 2016, Applicant was charged with failure to appear at a court hearing. (SOR ¶¶ 1.a) Applicant said in her Answer and at hearing that she failed to receive notice of a court date because she had moved. Once she became aware of the matter, she went to court to sort it out, and she said no negative action was taken. (Tr. 37-38) Court records in evidence show she was in fact found guilty. (GE 4) In December 2016, Applicant was found guilty of violating the terms of her probation (SOR ¶ 1.b) and it was extended for six months, to June 2017. (Tr. 35-37)

From February 2017 to June 2017, Applicant received outpatient counseling for substance abuse, through a court-ordered ASAP program. There are no documents in the record relating to this program, but it corresponds with the extension of Applicant's probation. She continued to consume alcohol after this treatment. (SOR ¶ 2.f) (Tr. 49; GE 2 at 5)

Applicant disclosed in her October 2017 Interrogatory Response that she had consumed alcohol as recently as August 1, 2017. (GE 2 at 5) She initially testified that she had not consumed alcohol since finishing probation in summer 2017. (Tr. 60-61).

³ SOR ¶ 1.d alleges that Applicant's 2016 SARP treatment was "outpatient," when in fact it was inpatient treatment.

She later said she stopped consuming alcohol only upon receiving the interrogatories from DOHA, in October 2017. (Tr. 71)

Applicant testified that about a month before the hearing, several family members passed away (a grandmother, an aunt and an uncle). She attended a few Alcoholics Anonymous (AA) meetings shortly before the hearing to help her cope with her grief, instead of returning to drinking. She has not had any alcohol treatment since leaving the Navy's SARP program. She has not had any subsequent alcohol evaluations. (Tr. 49-50, 57-59, 72-73, 84-85)

After spring 2016 the record contains no documentation about Applicant's completion of any aftercare programs since she left the Navy. There is no documentation of any participation in AA or of any other alcohol counseling since then either. There is no record evidence of character references or recommendation letters.

Guideline E:

In January 2017, right after her probation violation hearing in December 2016, Applicant had her initial PSI. She had a second PSI in March 2017. She authenticated and adopted both interview summaries in her Interrogatory Response. (GE 2)

In her January 2017, PSI, Applicant discussed her alcohol involvement and her various criminal offenses. Applicant also stated that an interlock device had been placed on her vehicle and would remain until June 2017. (GE 2, PSI # 1) She later said that she stopped consuming alcohol between her September 2015 DWI arrest and August 2016. (GE 2, PSI # 1) Applicant did not mention any of her five interlock violations in her January 2017 PSI.

Applicant allegedly failed to disclose those violations despite being asked if she had any more alcohol-related arrests or incidents since her 2015 DWI. (SOR ¶ 3.a)⁴ In answer to that allegation, she said, "I admit. It didn't cross my mind but I did give all info needed." (Answer)

Applicant's second PSI (PSI # 2) in March 2017 largely concerned her five interlock violations between September 2015 and December 2016, and her failure to disclose them during her earlier PSI. During the interview, Applicant said two of the violations were due to a false reading. This was caused, she claimed (without proof), by her use of a breathing inhaler which contained ethanol. She blamed the third violation on a friend, who she allowed to drive her car, but who had allegedly consumed alcohol prior to attempting to do so. This friend was also pregnant at the time. (Tr. 80-81; GE 2, PSI # 2)

In her second PSI, Applicant accepted personal responsibility for only one of the interlock violations (in August, 2016, as noted above). Applicant was confronted with

⁴ The text of SOR ¶ 3.a erroneously cross-references SOR "paragraph 1.a," instead of SOR ¶ 1.b, the allegation concerning the five ignition-interlock violations. This typographical error was not addressed at hearing.

information showing that the blood-alcohol content level found for each violation was .107%, .020%, .023%, 0.086% and .141%, respectively. (GE 2, PSI # 2) It is not clear from the record when these violations occurred. Applicant admitted during her first PSI that she began drinking again in August 2016 (while still on probation). (GE 2, PSI # 1) At hearing, Applicant accepted responsibility for all five interlock violations. (Tr. 81)

When confronted about why she did not disclose the violations in her first interview, Applicant first claimed that the court date occurred after the interview. The court date was in December 2016, and the interview was a month later. Applicant then claimed she had a lot on her mind, and was focused on successfully completing her ignition-interlock requirements. In her second PSI, in her Answer, and at hearing, Applicant denied any intent to falsify in her first interview, and claimed that the interlock violations did not cross her mind at the time. (GE 2, PSI # 2; Answer; Tr. 51, 75-89) The interviewing agent did not testify. There is no record evidence of what Applicant was actually asked during PSI # 1 about the five interlock violations.

Policies

It is well established that no one has a right to a security clearance.⁵ As the Supreme Court noted 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.”⁶

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 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

⁵ *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”).

⁶ 484 U.S. at 531.

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 J: Criminal Conduct:

AG ¶ 30 expresses the security concern for 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 ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (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;
- (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; and
- (d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant committed several alcohol-related criminal offenses between July 2013 and September 2015. While on probation for her DWI, she had five ignition-interlock violations. She violated the terms of her participation in a court-ordered ASAP program by drinking alcohol. She was found guilty of failure to appear in October 2016. She was found guilty in December 2016 of violating her probation, and it was extended for six months, until June 2017. AG ¶¶ 31(a), 31(b), and 31(d) apply.

The following mitigating conditions for criminal conduct are potentially applicable under AG ¶ 32:

- (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

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant has a problem with alcohol, and she has never really come to grips with it. She was treated twice while in the Navy for alcohol dependence, both inpatient and outpatient. Applicant's alcohol issues led to a general discharge from the Navy under honorable conditions, in April 2016. She has alcohol-related criminal convictions that are both multiple and recent. On multiple occasions while on probation for her 2015 DWI, Applicant proved unable to comply with the terms of her probation. Her probation was then extended until June 2017, less than a year before the hearing. Despite several periods of treatment for her alcohol use disorder, Applicant has also continued to consume alcohol. She consumed alcohol as recently as October 2017, and stopped, she says, only upon receiving the interrogatories from DOHA. Having left the Navy, she has little to no support network established to help her deal with her serious alcohol disorder. Her repeated failures to comply with the law are too frequent and too recent to mitigate. She also provided no documentary evidence of successful completion of her probation, or ongoing counseling. She provided no documents relating to a positive work record or constructive community involvement. AG ¶¶ 32(a) and 32(d) do not apply. Applicant did not provide sufficient evidence to mitigate the criminal conduct security concerns.

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 disqualifying condition is 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;

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, or licensed clinical social worker) of alcohol use disorder;

- (e) the failure to follow treatment advice once diagnosed;
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Guideline J allegations ¶¶ 1.b, 1.c, 1.d and 1.f are all cross-alleged under Guideline G at SOR ¶ 2.a. They are all established by the record evidence, and they all satisfy AG ¶ 22(a).

Applicant was diagnosed with alcohol dependence in 2014 and alcohol use disorder, severe, in 2016, while in the Navy's SARP program. AG ¶ 22(d) applies. Applicant was advised by SARP personnel during both periods of treatment for her disorder that she should abstain from alcohol use, yet has continued to drink. She also received further alcohol counseling in 2016 and 2017, while on probation for her 2015 DWI after leaving the Navy, yet she continued to consume alcohol as recently as October 2017. AG ¶¶ 22(e), 22(f) and 22(g) all 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;
- (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;
- (c) the individual is participating in counseling or a 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.

Applicant has not fully acknowledged the extent of her problems with alcohol. To begin with, she has never acknowledged being anything other than a social weekend drinker. She made one general statement at hearing that when she was in the Navy, she used to drink "a lot," (including by drinking to intoxication on weekends). However,

she provided no testimony about having anything more than a drink or two either while out socializing with friends, or at home after work. Given that Applicant has diagnoses of alcohol dependence (in 2014) and alcohol use disorder, severe (in 2016), her testimony and interview statements about the level of her drinking is not credible.

Applicant completed both SARP programs, but her completion of the aftercare programs (particularly the more recent one) is undocumented and unverified. Having been given professional medical advice on multiple occasions to abstain from alcohol, she has not done so. She has not established a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. AG ¶¶ 23(b) and 23(d) do not apply.

Applicant is no longer participating in any treatment program. She participated in AA on a few occasions right before the hearing to help her deal with the recent passing of several family members. But that is not sufficient evidence that she is participating in AA, or any other counseling program in any sustained way. It also cannot be said that Applicant has no previous history of treatment and relapse. AG ¶ 23(c) does not apply. AG ¶ 23(a) does not apply for the same reasons AG ¶ 32(a) does not apply in Guideline J, above. Applicant did not provide sufficient evidence to mitigate the alcohol involvement security concerns.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and

regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . .

(2) any disruptive . . . or inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

Guideline J allegations ¶¶ 1.a through 1.d are all cross-alleged under Guideline E at SOR ¶ 3.a. Each of them is established by the record evidence. AG ¶¶ 16(c) and 16(d)(2) and (3) apply to SOR ¶ 3.a, as does the general security concern of AG ¶ 15.

Notwithstanding Applicant's use of the words, "I admit" in her answer to SOR ¶ 3.b, I regard her answer as a denial because she said she "gave all information needed." Thus, the Government had the burden of proving the allegation.

In SOR ¶ 3.b, the Government alleged that Applicant failed to divulge her ignition-interlock violations to the interviewing investigator during her January 2017 PSI. The summary of that interview, which she authenticated and adopted in GE 2, does not mention the five ignition-interlock violations. Applicant went to court a month earlier, in December 2016, and her probation was extended to June 2017 (which she mentioned in PSI # 1). But she did not mention in PSI # 1 why her probation was extended. Applicant said that the interlock violations "did not cross her mind" at the time.

This explanation for her omission is not credible. In weighing Applicant's credibility on this point, I also considered the credibility of her interview statements and testimony about her pattern of alcohol consumption. Applicant acknowledged that she drank "a lot" while in the Navy, including to the point of intoxication. But she never acknowledged that she has a more serious problem with alcohol (as she clearly does, given her repeat diagnoses). She also testified that her inpatient treatment in SARP in spring 2016 was so she could save money – not because she needed alcohol treatment. This, too, shows that she has failed to acknowledge the extent of her alcohol issues.

These findings weigh against Applicant's overall credibility, and make it more likely that she deliberately failed to divulge her ignition-interlock violations during her initial interview, as alleged. Further, it is clear from reading the summary of PSI # 2 (which Applicant also authenticated) that the interviewing agent confronted her about

them, and asked during the second interview why she did not disclose them during her January 2017 PSI.

The interviewing agent did not testify at hearing. Thus, it cannot be determined with certainty what it was Applicant was actually asked about concerning the interlock violations during PSI # 1. SOR ¶ 3.b incorrectly cross-references SOR ¶ 1.a (failure to appear) instead of SOR ¶ 1.b (five ignition-interlock violations). However, there is no evidence Applicant was confused by this typographical error, and it has no bearing on my findings. On balance, considering all the record evidence concerning this allegation, including Applicant's testimony, I find that the Government established that Applicant failed to divulge her five ignition-interlock violations in her January 2017 PSI, and that she did so deliberately. AG ¶ 16(b) applies to SOR ¶ 3.b.

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

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

(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 stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

As to SOR ¶ 3.a, AG ¶¶ 17(c) and 17(d) do not apply for the same reasons as set forth in the analysis of the mitigating conditions under Guidelines J and G, above. As to SOR ¶ 3.b, there is no evidence that Applicant attempted to correct her omissions before being confronted. AG ¶ 17(a) does not apply. AG ¶¶ 17(c) and 17(d) also do not apply.

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 Guidelines J, G, and E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Applicant has yet to come to terms with the extent of her alcohol issues. I do not believe that she was fully candid at hearing about the extent of her drinking. While she may have lessened her drinking in the months before the hearing, she did so only when presented with interrogatories from DOHA, indicating to her, perhaps for the first time, that her clearance was in jeopardy because of her alcohol issues (and related criminal conduct). Applicant needs to establish a significant, sustained track record of abstinence, sobriety, appropriate counseling, and compliance with the law before she can again be considered a suitable candidate for access to classified information. Applicant did not mitigate the alcohol involvement, criminal conduct or personal conduct security concerns. Eligibility for access to classified information is denied.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a-2.f:	Against Applicant
Paragraph 3: Guideline E:	AGAINST APPLICANT
Subparagraph 3.a-3.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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge