



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



In the matter of:)
)
) ISCR Case No. 12-04298
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2017

Decision

Curry, Marc E., Administrative Judge:

Given the severity of Applicant's alcohol use and her continued use after a diagnosis of alcohol dependence, she has not mitigated the alcohol consumption security concerns. Her failure to disclose both an alcohol-related job reprimand and a complete history of her alcohol rehabilitation treatment on her security clearance application constitute intentional, unmitigated omissions under the personal conduct security guideline. Clearance is denied.

Statement of the Case

On August 31, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines G, alcohol consumption, and E, personal conduct, 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 September 18, 2015, Applicant answered the SOR, admitting all of the allegations, and requesting a decision based on the written record instead of a hearing. On November 4, 2015, Department Counsel prepared a File of Relevant Material (FORM) with eight attachments (Items 1-8). That month, Applicant's case was discontinued after she lost the sponsorship of an employer. The case was later re-opened after Applicant obtained another sponsor. On March 10, 2017, Department Counsel again sent the FORM to Applicant. The second copy of the FORM contained an additional exhibit (Item 9). Applicant received the updated FORM on March 16, 2017 and did not respond. The case was assigned to me on October 1, 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

Items 5 and 9 are Report of Investigations (ROI) summarizing Applicant's personal subject interviews conducted on January 31, 2012 and August 6, 2016, respectively. Such reports are inadmissible unless authenticated. Directive ¶ E3.1.20. Applicant authenticated Item 5 by signing a statement adopting the investigative agent's summary as accurate and true. Item 5 is therefore admissible. There is no such statement appended to Item 9, which remains unauthenticated, and inadmissible. Therefore, I will consider Item 5 in my disposition of this case, but I will not consider Item 9.

Findings of Fact

Applicant is a 59-year-old married woman. A high school graduate, she has been working with a defense contractor since 2011, as a consultant. (Item 7 at 5)

Applicant has a drinking problem. She started drinking alcohol as a teenager, and she began losing control of her drinking by age 40. By then, she was drinking a pint of vodka and several glasses of wine a few times each week. (Item 6 at 16) She attempted treatment at a rehabilitation facility in 2003, but it was unsuccessful, as she relapsed. (Item 6 at 16)

In 2008, Applicant began to experience more stress on the job, and began drinking alcohol in the morning before work to cope. (Item 7) Realizing that the problem was

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

worsening, she attempted total sobriety. Unable to sustain this, she attempted to manage her alcohol consumption by limiting it to social drinking. (Item 7 at 2)

Applicant's efforts at controlling her drinking failed. In March 2009, she received a written reprimand for smelling like alcohol on the job. (Item 4 at 3) Between 2009 and 2012, she fell twice in her home while intoxicated. (Item 7 at 2) Both episodes resulted in injuries that required emergency room treatment. On May 26, 2011, Applicant entered an inpatient treatment center for alcohol abuse where she was diagnosed with alcohol dependence. (Item 7 at 1) Unhappy with the quality of patient-care services, Applicant left the facility on June 4, 2011, without finishing the treatment program. (Item 7 at 11, 15). Her discharge prognosis was poor. (Item 7 at 11)

On April 27, 2012, Applicant received emergency room treatment after injuring her head after falling down the steps at her home. She had consumed a bottle of wine earlier that evening. (Item 8 at 5) The emergency room doctor, upon reviewing a blood test that, among other things, measured her liver enzymes, concluded that she was not being candid about her alcohol consumption. (Item 8 at 15)

In May 2012, Applicant enrolled in another inpatient treatment facility. (Item 6 at 1) She was diagnosed with alcohol dependence and alcohol withdrawal syndrome. Upon discharge, her counselor recommended that she complete a 12-step program, such as Alcoholics Anonymous (AA), and obtain a sponsor. (Item 6 at 13)

Consistent with the outpatient plan, Applicant attended AA meetings daily for three months after discharge, and twice per week for the next year and a half, through approximately March 2014. (Item 1 at 6) As of the date of the SOR, Applicant was drinking alcohol again, in contravention of her treatment plan. (Item 1 at 5) She contends that she is drinking in moderation.

After Applicant's father died in October 2007, she became the executor of his estate. This was an onerous job that required that she travel frequently to a state hundreds of miles from where she lived, organizing records, opening bank accounts, making court appearances, and tracking down relatives. (Item 4 at 1) The lengthy probate process, together with some major health issues, prompted her to take 12 weeks of leave through the Family Medical Leave Act (FMLA) in late 2009. When the FMLA leave expired, Applicant was not ready to return to work, and her employer refused to hold the position open any longer. They then reached a mutual agreement that Applicant resign in November 2009. (Item 2 at 6)

The SOR alleges that Applicant intentionally falsified her security clearance application by failing to include either her March 2009 written reprimand, or her resignation of November 2009, in response to Section 13A of her security clearance application, which requires the disclosure of any employment terminations or departures after any charge of misconduct or unsatisfactory performance. Applicant contends that she only drank alcohol at work after obtaining prior approval, and that her employer had a culture of alcohol consumption, and promoted drinking on the job on Friday afternoons. (Item 1 at 5) As for

her failure to disclose her 2009 resignation, she contends that it did not meet the criteria for inclusion under Section 13A.

Applicant failed to disclose her inpatient, alcohol treatment, received between May and June 2011, as required in response to Section 24 of her September 2011 security clearance application. Application contends that she did not include it because she was displeased with the quality of care that she received while enrolled in the program. (Item 1 at 5)

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), 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.

Analysis

Guideline G, 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 struggle with alcohol addiction over the years has resulted in several alcohol-related falls, and a reprimand from her employer. She has sought treatment three times, and continues to drink alcohol against the advice of clinicians after having been diagnosed as alcohol dependent. The following disqualifying conditions apply under AG ¶ 22:

- (b) alcohol-related incidents at work such as reporting to work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is 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;
- (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;
- (e) the failure to follow treatment advice once diagnosed; and
- (f) alcohol consumption, which is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder.

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 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 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.

Applicant has a serious history of alcohol abuse. Although she acknowledges her problem and has periodically received treatment, she has relapsed multiple times, and continues to consume alcohol, despite multiple diagnoses of alcohol dependence. Under these circumstances, none of the mitigating conditions applies.

Guideline E, Personal Conduct

Under this guideline, “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.” Moreover, “of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” (AG ¶ 15) Applicant’s omission of her March 2009 alcohol-related reprimand, her failure to disclose the circumstances of her job resignation November 2009, and her failure to disclose inpatient treatment in 2011 from her security clearance application raises the issue of whether the following disqualifying condition under AG ¶ 16(a) applies:

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.

Applicant’s resignation from her job in November 2009 did not relate to incompetence, bad conduct, or irresponsibility. Instead, she resigned after she had exhausted her FMLA leave, yet still needed time away from work to manage urgent family affairs. Under these circumstances, Applicant’s contention that she did not believe she had to list this resignation on her security clearance application was credible under the circumstances. AG ¶ 16(a) does not apply. I resolve subparagraph 2.a in her favor.

As for subparagraph 2.b, Applicant’s employer reprimanded her for smelling like alcohol on the job, and she was required to list this in response to Section 13A of her 2011 security clearance application. Whether or not Applicant’s employer had a permissive drinking culture, as she explained in her SOR answer, is not relevant to the issue of whether she should have listed the reprimand on her security clearance application. Similarly, Applicant’s dissatisfaction with the rehabilitation services received from the treatment facility in 2011 did not obviate her responsibility to disclose that treatment on the security clearance application. AG ¶ 16(a) applies to subparagraphs 2.b and 2.c without mitigation.

Whole-Person Concept

I considered the whole-person factors in my analysis of the guidelines, and they do not warrant a favorable conclusion.

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.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.c:	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