



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



In the matter of:)
)
) ISCR Case No. 07-02393
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Le'i, Department Counsel
For Applicant: *Pro Se*

August 29, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant has an extensive teenage history of alcohol and illegal drug use and related problems. Applicant has failed to rebut or mitigate the government's security concerns under alcohol consumption and drug involvement. She did rebut or mitigate the personal conduct and criminal conduct concerns. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on January 14, 2008, detailing security

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

concerns under Guideline G, alcohol consumption, Guideline H, drug involvement, Guideline E, personal conduct, and Guideline J, criminal conduct.

On March 19, 2008, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated April 22, 2008. Applicant was sent a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response to the FORM was due 30 days after receipt of a copy of the FORM. On May 5, 2008, Applicant received the FORM. As of July 2, 2008, no response had been received. On July 7, 2008, I was assigned the case.

Findings of Fact

In her Answer to the SOR, Applicant denied the factual allegations in ¶ 1.b, 3.a and 4.a of the SOR. She admitted the remaining factual allegations, with explanations.

Applicant is a 21-year-old administrative assistant, born in September 1986, who has worked for a defense contractor since November 2005, and is seeking to maintain a security clearance. Applicant admitted that, at times, between 2002 (age 16) and May 2007 (age 20) she consumed alcohol to excess. At age 16, she was smoking marijuana and drinking "almost every day." (Item 7, R-60) In 2003, she started skipping school "almost every day." (Item 7, R-60)

In July 2003, Applicant was ticketed for reckless driving, which resulted in the suspension of her driver's license, fines, court costs, and she was required to attend driver's improvement training. This was an alcohol related incident. (Item 7) The charge was reduced from driving under the influence (DUI) to reckless driving due to Applicant's cooperated with the police. (Item 7, R-60, R-67)

During the Summer and Fall of 2002, she attended an outpatient treatment program twice a week. She did not complete the program. During her attendance in the program, she was drinking continuously. (Item 7, R-60)

In July 2003, Applicant stopped using marijuana because she felt it was becoming a problem, but continued to drink. (Item 7, R-60) Shortly after her driving charge, she returned to using marijuana. In March 2004, she appeared in court on possession of an alcoholic beverage charge. (Item 7, R-15)

On February 17, 2004, she was called to the school office and shown pictures of her smoking marijuana off the school grounds. Alcohol was smelled on her breath and a breathalyzer confirmed she had been drinking that morning. She was charged with being under the influence of alcohol at school resulting in a three day suspension.

In February and March 2004, she received 30-day inpatient treatment for alcohol dependence, cannabis dependency, and substance induced mood disorder. (Item 7, R-

6, R-69) Her alcohol use for the month prior to her admission was three to four times a week. She generally drank on weekends and over the month prior to her admission she was drinking on weekdays. Each time she drank it was to the point of intoxication. She generally drank seven or eight hard liquor drinks and seven or eight beers until she was intoxicated. (Item 7, R-67) She was also using marijuana daily for a month or two prior her admission. (Item 7, R-15) Her drug use was costing her about \$50 per week. (Item 7, R-67) Her longest period of abstinence from illegal drugs was three months. (Item 7, R-67)

On March 23, 2004, she successfully completed intensive inpatient treatment for chemical dependency and was discharged. (Item 7, R 101) Following her discharge, Applicant participated in an outpatient aftercare program. She failed to complete the outpatient program due to continued use of alcohol and marijuana. Applicant's attitude had deteriorated to the point she did not care about the treatment, consequences, or school. She was unable to complete the one course she needed for high school graduation and was required to complete the course in summer school. In May 2004, she tested positive for marijuana. Subsequent tests, until her discharge, were also positive. (Item 7, R-6) She was withdrawn from the program due to her lack of motivation to continue and her parent's unwillingness to continue to support her marginal efforts. (Item 7, R-6) In May 2004, she stopped participating in the program. (Item 6)

Applicant used marijuana from 2002 (age 16) to at least June 2005 (age 18). During that time, she purchased and sold marijuana. From January 2005 to June 2005, she purchased and used cocaine.

Notwithstanding her 2004 treatment for alcohol and cannabis dependence, she continued using alcohol until May 2007 and marijuana until June 2005. Applicant asserts she has matured greatly since her treatment. (Item 5)

In January 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). Question 23 d. asked her if she had ever been charged with or convicted of any offenses related to alcohol or drugs. She answered "no." Applicant did reveal her illegal drug use on the form. She indicated she had used cocaine ten times between January 2005 and June 2005 and had used marijuana "many times." (Item 4) In fact, she was, at times, smoking marijuana three or four times a day. (Item 6) In response to question 24 a., she indicated she had used illegal drugs, but failed in question 24.c to indicate she had ever purchased or sold illegal drugs.

During an October 2006 interview, Applicant stated her drug use had caused problems with her family because they wanted her to stop and she would not. Applicant asserted she did not intend to use drugs or alcohol in the future and cited as motivation her desire to lead a better and healthier life. (Item 6)

In May 2007, she responded to written interrogatories. (Item 5) She stated she was drinking three or four beers on the weekends. (Item 5, I-2) As of May 2007, she was attending community college.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 access to classified information will be resolved in favor of 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 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 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 information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying:

(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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and,

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶ 22 (a) applies due to alcohol-related incidents away from work including: the alcohol related July 2003 reckless diving charge, her February 2004 suspension from high school, and her March 2004 court appearance on the possession of an alcoholic beverage charge. AG ¶ 22 (c) applies due to her admissions that at times she was drinking daily to the point of intoxication. AG ¶ 22 (e) applies because she was diagnosed as alcohol dependent. AG ¶ 22 (f) applies because, after completing her

inpatient treatment in March 2004, she was unable to complete the aftercare program due to her continued drinking and marijuana use. As of May 2007, she was still drinking.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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 or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and,

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

None of the mitigating conditions apply. AG ¶ 23 (a) does not apply because the behavior was not infrequent and it did not occur under unusual circumstances. Since she was still drinking a year ago, it is too soon to find her prior behavior is unlikely to recur. AG ¶ 23 (b) does not apply because there is no acknowledgement of alcoholism or issues of alcohol abuse. Additionally, evidence of actions to overcome the problem are lacking from the record. In her answer to the SOR, Applicant fails to state she is no longer drinking or understands her problem. AG ¶ 23 (c) does not apply because there is no showing she is in a counseling or treatment program or that she is making satisfactory progress. AG ¶ 23 (d) does not apply because Applicant never successfully completed aftercare or has demonstrated a clear and established pattern of modified consumption or abstinence.

I do not find against Applicant because she sought treatment for her alcohol problem, but do find against her for failing to complete the program and failing to complete after care due to her continued alcohol use.

Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement in that the use of an illegal drug or misuse of a prescription drug can raise questions about an

individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse;
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and,
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

The following AG conditions apply: AG ¶ 25 (a) drug abuse; AG ¶ 25 (b) testing positive for illegal drug use during her treatment program; AG ¶ 25 (c) purchasing and selling illegal drugs; AG ¶ 25 (e) being diagnosed as cannabis dependent; and AG ¶ 25 (f) failure to complete aftercare treatment due to her continued alcohol and marijuana usage.

AG ¶ 26 sets forth conditions that could mitigate security concerns.

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

None of the conditions that could mitigate security concerns apply. AG ¶ 26 (a) does not apply because the use was daily, did not occur under unusual circumstances, and the last use was just over three years ago. Applicant states she will not use illegal drugs again. However, there is no showing she has disassociation from drug-using associates and contacts, changed or avoids the environment where drugs are used, or executed a signed statement of intent with automatic revocation of clearance for any violation. It has been three years since her last use. Considering the frequency and history of her use this period of abstinence is insufficient, AG ¶ 26 (b) does not apply.

AG ¶ 26 (c) does not apply because prescription drugs were not abused. AG ¶ 26 (d) does not apply because Applicant failed to complete aftercare. In fact, she last used illegal drugs in June 2005, more than a year after she stopped participating in the aftercare program in May 2004. I do not find against Applicant because she sought treatment for her illegal drug problem, but do find against her for failing to complete treatment, failing to complete aftercare, and using marijuana after completing treatment.

Personal Conduct

In an October 2006 interview, Applicant stated she had stopped using drugs and alcohol in June 2005. In May 2007, she had returned to drinking beer. The fact Applicant started drinking again after the interview does not prove she lied at the interview. Applicant has denied intentional falsification.

Deliberate omissions, concealment, or falsifications of material facts in any written document or oral statement to the Government, when applying for a security clearance, are certainly of security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

In this case, Applicant stated, at the time of the interview, she intended to stop using drugs or alcohol. She was motivated by a desire for a better and healthier life. She said she would not use in the future. This could be construed as a promise to stop or her prediction concerning her future use. It was merely her stated intent. The fact she returned to drinking beer a year and a half later fails to establish her October 2006

statements were intentionally false. There is no showing she was using illegal drugs or alcohol when she made her statements. I find her actions did not constitute deliberate and willful falsification.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to 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.”

Providing false answers to the federal government during the course of official business is a violation of Title 18, United States Code, Section 1001, a felony. However, I have found Applicant statements about possible future use of alcohol and illegal drugs was not an intentionally false statement. Therefore, I find for Applicant as to criminal conduct.

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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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) 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. Applicant has an extensive history of drug and alcohol use and problems. She has abstained from illegal drugs usage for slightly over three years and she last used alcohol a year ago, it is too soon to say her problems will not recur.

Applicant is still very young, she is only 21 years old. She acknowledges the negative impact of her past conduct as a teenager. She realizes how her poor decisions concerning alcohol and drug use have hindered her. As an immature person she made

immature decisions. She now asserts she is more mature, responsible, and is attending community college.

Although her evidence of rehabilitation is insufficient at this time, this decision should not be construed as a determination that Applicant can not or will not attain the state of true reform and rehabilitation necessary to justify the award of a DoD security clearance. Applicant fell victim to vices that plague many young people. Applicant has seen the error of her ways.

In the future, should she be afforded an opportunity to reapply for a security clearance, with the passage of sufficient additional time, continued rehabilitation, and no future incidents of misconduct, the alcohol consumption and drug involvement could be found in Applicant's favor. She may well demonstrate persuasive evidence of security worthiness. But that time has not yet arrived. Because the Applicant meets the disqualifying conditions and none of the mitigating conditions, the alcohol and drug security concern is resolved against her.

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:

Alcohol consumption:	AGAINST APPLICANT
Subparagraph 1.a-1g:	Against Applicant
Drug involvement:	AGAINST APPLICANT
Subparagraph 2.a-h:	Against Applicant
Personal conduct:	FOR APPLICANT
Criminal conduct:	FOR 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge