



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



In the matter of:)	
)	
)	ADP Case No. 14-05484
)	
Applicant for Public Trust Position)	
)	

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

07/22/2015

Decision

DAM, Shari, Administrative Judge:

From 2004 to 2010, Applicant was arrested or cited 12 times for criminal conduct involving alcohol consumption. As a consequence, she was incarcerated and placed on probation for periods of time. Although she presented evidence of rehabilitation since January 2013, she failed to sufficiently mitigate the trustworthiness concerns raised under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. She mitigated the trustworthiness concerns raised under Guideline E, Personal Conduct. Her eligibility for a public trust position is denied.

On July 14, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 4, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline G, Alcohol Consumption, Guideline J, Criminal Conduct, and Guideline E, Personal Conduct. The action was taken under 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); DoD 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On February 16, 2015, Applicant answered the SOR (Answer), and requested a hearing. On April 13, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On April 24, 2015, DOHA issued a hearing notice, setting the case for May 19, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibit (AE) A into evidence. All exhibits were admitted. The record remained open until June 12, 2015, to give Applicant time to submit additional exhibits. She timely submitted five exhibits, which I marked as AE B through F, and admitted without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on May 29, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted all allegations contained in the SOR. Her admissions are incorporated into the following findings.

Applicant is 30 years old and unmarried. She graduated from high school in 2003. She was married from 2006 to 2008. In June 2013 she began a position with a healthcare company. (Tr. 10-13.)

Applicant has a long history of criminal conduct relating to alcohol abuse. In December 2003 she was terminated from employment having arrived at work under the influence of alcohol. On two different occasions in June 2004, she was cited and arrested for alcohol-related crimes, and later convicted. She was 20 years old.

In 2005 Applicant was arrested and charged with alcohol-related crimes in July, September, and December. During that time frame, she was arrested four times for driving while intoxicated (DWI), and was subsequently convicted. (Tr. 22.) In November 2005 she was charged with dishonored check, a misdemeanor, and later pled guilty. (Answer.)

In April 2006 Applicant entered a 28-day inpatient treatment program for alcohol abuse, where she was diagnosed as alcohol dependent. After being released, she failed to participate in an aftercare program and resumed the consumption of alcohol. (Tr. 23; Answer.) In September 2006 she was cited for having an open bottle of alcohol in her vehicle. (Answer.)

Between June 2004 and December 2006, Applicant spent about 30 days in jail for various crimes. (Tr. 21.) She was also placed on probation four times, including a two-year period from 2005 to 2007. (Tr. 45; Answer.)

In January 2007 Applicant was arrested and charged with fleeing a peace officer and obstructing the legal process. In August 2007 she was charged with loud noise and disorderly conduct. Both charges involved the consumption of alcohol. She was incarcerated from February 2007 to July 2007. (Answer.)

In May 2010 Applicant was arrested and charged with DWI; violating one-way traffic device; careless driving; and felony eluding. In June 2010, while on bond, she was arrested and charged with operating a vehicle while intoxicated, 5th charge (OWI); open container; dark window/windshield; and failure to comply with order of peace officer. In December 2010 she pled guilty to the May 2010 OWI felony and felony eluding charges. The other charges from May and June 2010 were dismissed. She was sentenced to five years in prison and ordered to pay costs, fines, and restitution. She was incarcerated from March 2011 until June 2012, at which time she entered a work release program. In August 2012 she was placed on parole until April 2013. (Tr. 44.) While on parole she worked for a hotel chain. In June 2013 she started her current position. (Tr. 45.) Her driver's license was suspended at times between 2005 and 2013. (Tr. 27, 33.)

In January 2011, prior to beginning incarceration in March 2011, Applicant started participating in an intensive alcohol treatment program through the criminal justice system, which included extensive therapy with a counselor and a psychiatrist. (Tr. 47.) After leaving prison in June 2012, she continued treatment and attendance at Alcoholic Anonymous (AA) until January 2013. (Tr. 41.) She said that she has changed her life and environment since leaving prison and completing treatment in January 2013. As a consequence of treatment, she gained significant insight into the psychological reasons underlying her alcoholic behavior, anger, and unhappiness. (Tr. 47-48.) She admitted that she was not mature at the time she participated in treatment in 2006 and when she chose not to continue in aftercare. (Tr. 39.)

Applicant understood the negative effect alcohol has had on her life. She does not consider herself alcohol dependent at this time, but recognizes that it has created serious problems for her in the past. She said she no longer has a craving for alcohol. (Tr. 37.) The last time she consumed alcohol was in January 2011, before she entered the criminal justice system. (Tr. 28.) She does not intend to resume drinking alcohol in the future. (Tr. 40-41.) She has not participated in any type of aftercare or AA meetings since January 2013 because she has not felt it necessary for her to maintain sobriety. She is happy with her life and does not want to jeopardize it by drinking alcohol. (Tr. 37-38, 43.)

Applicant submitted numerous exhibits attesting to her rehabilitative efforts. She successfully completed substance abuse treatment programs, and workplace and life skill courses while incarcerated. (Tr. 53-54; Answer.) Her supervisor wrote a letter complementing her work and productivity. (Answer.) She provided a 2014 performance evaluation that gave her a high rating and subsequent promotion, effective June 1, 2015. (AE B, AE C, AE E.) She received a bonus for excellent performance in February

2015. (AE D.) Applicant submitted a copy of a May 2015 credit bureau report, documenting the resolution of debts delinquent since 2005. (Tr. 51; AE A.)

Policies

Positions designated as ADP I, II, and III are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines (AG). 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 AG ¶ 2(a), describing 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 access to [sensitive] 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination 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

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the trustworthiness 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 describe three conditions that could raise trustworthiness concerns and may be disqualifying 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 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; and
- (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.

From 2004 to 2010, Applicant was arrested or cited for alcohol-related incidents on 12 different occasions. Those incidents included, driving while under the influence and to the point of having impaired judgment, disturbing the peace, and reporting to work intoxicated. The incidents raise trustworthiness concerns under the above

disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate the concerns.

AG ¶ 23 provides conditions that could mitigate trustworthiness concerns raised under this guideline:

(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.

Applicant has a seven-year history of abusing alcohol, beginning in 2003 and continuing into early 2010. Given that long history and the fact that she has not participated in aftercare, AA or other forms of treatment since January 2013, there is insufficient evidence to determine that similar conduct is unlikely to recur. AG ¶ 23(a) does not apply. Applicant admits that she had a serious problem with alcohol prior to January 2011, which is the last time she stated that she consumed it. There is evidence that she participated in substance abuse treatment from January 2011 to January 2013, while incarcerated and on parole. Applicant established some mitigation under AG ¶ 23(b). Because she is not participating in an employee assistance treatment program, AG ¶ 23(c) does not apply. Although she completed a treatment program in January 2013 that was court-ordered, she did not provide an evaluation or opinion from a duly qualified health care provider involved in that treatment or an independent provider indicating a favorable prognosis or that aftercare is not required. AG ¶ 23(d) does not apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the trustworthiness concerns 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.

AG ¶ 31 describes a condition that could raise a trustworthiness concern and may be disqualifying in this case:

(a) a single serious crime or multiple lesser offenses.

Between 2003 and 2010, Applicant was convicted or cited 12 times for criminal conduct related to alcohol abuse, and another time for unrelated conduct. The last conviction was in December 2010. She was incarcerated several times, once for six months in 2007, and again from 2011 to 2012. The evidence raised the above qualifying condition.

AG ¶ 32 provides two conditions that could mitigate trustworthiness concerns:

- (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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) does not apply for the reasons articulated in the analysis of AG ¶ 23(a), above. Applicant presented some evidence of rehabilitation. She was successfully released from parole in January 2013. There is no evidence of criminal activity since June 2010. She participated in substance abuse rehabilitation until January 2013. She submitted documentation confirming a good employment record and gaining her employer's support. While testifying, she exhibited candor and visible remorse over her past conduct. These factors establish some mitigation under AG ¶ 32(d).

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concerns pertaining to 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 sets forth potentially disqualifying conditions, none of which are independently supported by this record. To the extent that Appellant's history of criminal conduct and alcohol abuse involve questionable judgment or unwillingness to comply with rules and regulations, said conduct can also be considered to support trustworthiness concerns under AG ¶ 15. However, no personal conduct mitigating condition was raised or supported by the record. This case is appropriately alleged and analyzed under the guidelines for alcohol consumption and criminal conduct.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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(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) 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is an honest, intelligent, hardworking 30-year-old woman, who began a position with a defense contractor in 2013. She has a history of alcohol abuse, which began when she was 20 years old. For seven years she engaged in criminal conduct related to the significant abuse of alcohol. She was convicted 12 times, incarcerated and placed on probation several times. She candidly admits her misconduct and expresses remorse. She testified about her rehabilitative efforts since January 2011 when she entered a treatment program through the criminal justice system. Upon her release from incarceration, she continued in substance abuse treatment until January 2013. She presented an impressive record of work performance over the past year. Her efforts to maintain sobriety and a healthy lifestyle are commendable. However, her history of alcohol abuse and criminal conduct is long and serious, and she did not present evidence to assure the Government that

she has sufficiently resolved the psychological issues underpinning her alcoholic behaviors, or that she established the skills and support system to assist her through difficult times in the future. She has not continued in aftercare treatment, such as AA or counseling, since January 2013, nor did she present evidence from an independent health care provider corroborating her statements that further treatment is not necessary. While the absence of alcohol related conduct for the past five years is noteworthy, that fact, along with some evidence of rehabilitation, is insufficient to outweigh her past history of alcohol abuse and criminal conduct and inconsistent with holding a public trust position. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position at this time. For these reasons, I conclude Applicant did not meet her burden to mitigate the trustworthiness concerns arising from alcohol consumption and criminal conduct. Trustworthiness concerns arising under the personal conduct guideline are mitigated.

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 G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.m:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For 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 public trust position. Eligibility for access to sensitive information is denied.

SHARI DAM
Administrative Judge