



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



In the matter of: )  
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 ) ISCR Case No. 14-04383  
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Applicant for Security Clearance )

**Appearances**

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

12/30/2015

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant's August 2013 alcohol-related arrest is mitigated as an isolated incident that does not negatively affect his ongoing security worthiness. Clearance is granted.

**Statement of the Case**

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,<sup>1</sup> on November 10, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption guideline. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960; as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a decision on the written record in lieu of a hearing. Department Counsel timely exercised their right to request a hearing in this case.<sup>2</sup> On July 22, 2015, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>3</sup> The parties complied with the terms of the order.<sup>4</sup> At the hearing, convened on August 14, 2015, I admitted Government's Exhibits (GE) 1 through 4, without objection. After the hearing, Applicant timely submitted AE A and B, which were also admitted without objection.<sup>5</sup> I received the transcript (Tr.) on August 21, 2015.

### **Findings of Fact**

Applicant, 57, has worked for his current employer, a federal contractor, since 2004 and has held a security clearance at various levels since 1978. In September 2013, Applicant's employer filed an incident report in the Joint Personnel Adjudication System (JPAS) to report an August 2013 arrest for driving under the influence of alcohol (DUI). In November 2013, Applicant's employer updated the incident report with information about Applicant's conviction on the DUI charge.<sup>6</sup>

Based at an office in State 1, Applicant often works on consulting projects away from home for long periods of time. In August 2013, he had been working on a project in State 2 for 15 months. On the night of his arrest, he consumed three to four glass of wine with dinner. Afterward, Applicant decided to drive himself back to the hotel, which was six miles from the restaurant. Less than a half mile from the hotel, a police officer stopped Applicant for a minor traffic violation. The police officer smelled alcohol on Applicant's breath and administered field sobriety tests, which Applicant failed. The results of a breathalyzer test indicated that Applicant's blood alcohol content (BAC) was .12%.<sup>7</sup>

Applicant self-reported the arrest to his facility security officer (FSO) the next business day. In September 2013, Applicant pleaded guilty to a lesser impaired driving charge. The court sentenced him to one year of supervised probation and ordered Applicant to attend 12 counseling sessions and an Alcoholics Anonymous meeting. He

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<sup>2</sup> Correspondence regarding the conversion of the case to a hearing is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> The prehearing scheduling order is appended to the record as HE II.

<sup>4</sup> The discovery letter, dated July 6, 2015 is appended to the record as HE III.

<sup>5</sup> Correspondence regarding Applicant's post-hearing submissions are appended to the record as HE IV.

<sup>6</sup> Tr. 17-18.; GE 1, 3.

<sup>7</sup> Tr. 19, 39-43, 46-47.

was also ordered to abstain from alcohol during the term of his probation and was subject to random alcohol tests. Applicant completed his required substance abuse counseling in March 2014. He did not receive any diagnosis from the psychologist during his sessions and learned of the purported alcohol abuse, episodic diagnosis from the psychologist when he received the SOR. The court released Applicant from supervision in October 2014. He abstained from alcohol from the night of his arrest until early 2015.<sup>8</sup>

Applicant, who describes himself as an occasional social drinker, does not believe that he has a problem with alcohol. However, he recognizes he committed a grave error in judgment the night of his arrest. Applicant does not have any other alcohol-related arrests on incidents. He has vowed not to consume alcohol and drive in the future.<sup>9</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 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 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.

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.

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<sup>8</sup> Tr. 20-21, 33-35, 45-47; GE 2.

<sup>9</sup> Tr. 21, 25, 35-36.

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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

Excessive alcohol consumption is a security concern because it “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.”<sup>10</sup> In August 2013, Applicant was arrested for and subsequently pleaded guilty to driving under the influence of alcohol.<sup>11</sup> Also, Applicant admitted in response to the SOR that he received a diagnosis of alcohol abuse, episodic from his psychologist.<sup>12</sup> However, the record does not contain medical records supporting or explaining the diagnosis. Applicant’s August 2013 arrest is mitigated as an isolated event that is unlikely to recur and does not reflect negatively on his current security worthiness.<sup>13</sup> Despite the alcohol abuse, episodic diagnosis, the incident is not symptomatic of an ongoing alcohol issue. Applicant does not have a history of alcohol-related incidents. Nor does the incident reveal any concerns about Applicant’s honesty or trustworthiness. Applicant properly and timely self-reported the incident. This shows that he takes his duties as a clearance holder seriously. He also complied with the terms of his sentence which is indicative of his ability to follow rules and regulations.

### **Whole-Person Concept**

Based on the record, I have no doubts about Applicant’s ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. Nor is the

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<sup>10</sup> AG ¶ 21.

<sup>11</sup> See AG 22(a).

<sup>12</sup> AG ¶ 22(d).

<sup>13</sup> See AG 23(a).

purpose of a security clearance adjudication to punish applicants for past misconduct. All that is required is that an applicant's past is not indicative of a current inability to properly handle and protect classified information. Here, it is not. Applicant has held a security clearance for 37 years and worked in his current position for the last 11 years without incident. Most important, Applicant has accepted responsibility for his actions and expresses remorse for his conduct.

### **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, Alcohol Consumption: FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

### **Conclusion**

In light the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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Nichole L. Noel  
Administrative Judge