



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 06-26697
SSN:-----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: Bruce Heurlin, Esquire; Eric J. McNeilus, Esquire

February 14, 2008

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**Decision**

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WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On July 10, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on August 7, 2007, and requested a hearing. The case was assigned to me on August 22, 2007, and was scheduled for hearing on October 31, 2007. A hearing was held on October 31, 2007, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on five witnesses (including himself)

and 29 exhibits. The transcript (R.T.) was received on November 9, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

### **Procedural Rulings and Evidentiary Issues**

Prior to the hearing, Department Counsel moved to amend the SOR to add (1) subparagraph 1.f that states as follows: "On or about June 12, 2007, you were arrested and charged with breach of the peace. You pled guilty and received time served and a fine of \$330.00. You were intoxicated at the time of this incident and arrest" and (2) subparagraph 2.g that states as follows: "That information as set forth in subparagraph 1.f above." There being no objection from Applicant, and good cause being demonstrated, Department Counsel's motion was granted. Applicant admitted the amended allegations of the SOR.

### **Summary of Pleadings**

Under Guideline J, Applicant is alleged to (1) have been involved in a number of alcohol related arrests between August 1990 and June 2004 and arrests and (2) have had an administrative action taken against him at a commercial airport in July 1996 for allegedly bringing 6 grams of hash into the U.S. (Fined \$500.00).

Under Guideline G, Applicant is alleged (a) by incorporation to have been involved in the alcohol-related arrests covered under Guideline J, (b) to have continued to consume alcohol to the point of intoxication through at least February 2007, despite counseling for alcohol abuse, and (c) to have been terminated by a previous employer in October 2003 for missing work due to drinking the night before.

Under Guideline H, Applicant is alleged to have (i) had administrative action taken against him at a commercial airport in July 1996 (see Guideline J), (ii) used cocaine on at least 20 occasions during the period of July 1998 through December 1999, (iii) used marijuana during the period of October 1983 through July 1998, (iv) used crystal methamphetamine at least 10 times during the period of July 1992 through July 1997, (v) used hash approximately 10 times during the period of June 1996 through July 1996, (vi) used LSD during the early 1990s, and (vii) sold marijuana and LSD during the early 1990s.

### **Findings of Fact**

Applicant is a 38-year-old network engineer for a defense contractor who seeks to retain his security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant was introduced to alcohol and marijuana while in high school and abused both for many years. He served two years in the Army between 1986 and 1988

and was honorably discharged. He estimates to have used marijuana on a regular basis, at times daily, between 1990 and July 1998 before quitting altogether. He used other illegal drugs in addition to his marijuana use. Between July 1998 and December 1999, he used cocaine on at least 20 occasions. Other illegal drugs he tried include crystal methamphetamine (at least 10 times between July 1992 and July 1997), hash (approximately 10 times during the period of June 1996 and July 1996), and LSD during the 1990s. During the early 90s, Applicant sold marijuana and LSD (R.T., at 174-75). He assures he has not used illegal drugs of any kind since December 1999 (R.T., at 64-65, 144) and has not associated with any of his old high school friends and associates who used illegal drugs (R.T., at 145-46).

Applicant was involved in a number of alcohol-related incidents between August 1990 and June 2004 and had administrative action taken against him in July 1996 at a commercial airport for bringing six grams of hash into the airport from overseas (resulting in a fine of \$500.00). Applicant's \$500.00 fine was assessed at the airport (R.T., at 175-76).

Records show that Applicant was arrested in August 1990 for driving under the influence (DUI) after failing a sobriety test and registering .153 per cent on an administered Breathalyzer test (R.T., at 180). He was later found guilty of DUI, jailed one night, fined \$1,000.00, and required to attend alcohol-related counseling. Applicant had been out drinking (estimated 10 to 12 beers) with his girlfriend at the time (who would subsequently become his spouse), and had become engaged in a verbal fight with her. While driving home, he was stopped by police and arrested (R.T., at 179-80).

Applicant married W in 1996 following seven years of courtship and had two children (both daughters) from this marriage. One of his daughters died at birth in December 1999 following an emergency c-section delivery (R.T., at 141-43). His youngest daughter was born in 2001 and attends kindergarten (R.T., at 147-48). Before their marriage, W used drugs and alcohol extensively.

Applicant continued to consume alcohol regularly following his July 1996 arrest. In June 1997, he was arrested and charged with public intoxication. He was found guilty as charged and fined. Besides the fine, he was ordered to pay restitution for the damage he caused to the room he was staying in (R.T. at 184). Applicant later reimbursed the hotel manager to cover the hotel's assessed damages (around \$1,000.00).

In August 1999, Applicant was arrested and charged with alcohol intoxication in public. Applicant had been drinking before the incident. He was fined by the court hearing his case (R.T., at 185).

Following his August 1999 arrest, Applicant continued drinking. In counseling sessions with MN in 2002, he described his drinking pattern between 1999 and 2002 as mostly episodic, which entailed drinking every three to four months moderate. He recounted one extended 13 month period between September 2001 and October 2002

after his daughter was born when he maintained his abstinence with the help of Alcoholics Anonymous (AA) (see ex. C; R.T., at 61, 197-98).

Applicant was involved in an abusive marriage and went through a difficult separation in 2003 that culminated in divorce in December 2004 (R.T., at 71-72). Because of marital stress in his life, he ceased his AA participation, frequented bars, and consumed alcohol quite regularly to self-medicate his stressors (R.T., at 202-03). His ex-wife told him after a year of continuous sobriety “that she liked him better when he was drinking.” (see ex. 33; R.T., at 51). Stressed by his marriage, he consumed alcohol to excess the night before an important company meeting in October 2003.. Specifically, Applicant and a co-worker met a woman in a local bar and continued their drinking in the woman’s hotel room after dinner (R.T., at 187-88). A hotel worker, concerned about his leaving the establishment on his own, helped him to a vacant room to spend the night. Applicant overslept and missed an important business meeting the following morning with a government customer. When the customer could not find Applicant in his hotel at the appointed time, he departed and informed his own government managers, who, in turn, notified Applicant’s employer (R.T. , at 188-89). Upon further investigation of the incident, his employer of eight years at the time terminated his services.

Applicant continued to drink heavily throughout the first six months of 2004, normally every two weeks or so, and most of the time to intoxication (R.T., at 203-04). His beverages of choice were beer and rum.

In June 2004, Applicant was arrested and charged with public intoxication. He had consumed alcohol in a local bar with a friend and accidentally bumped another car while stopping at a local fast food establishment (R.T., at 152). Informed of the incident, management of the establishment called the police. Administered a Breathalyzer test by the arresting officer at the scene, Applicant registered a .169 per cent BAC (R.T., at 190). In court, he was found guilty of Dul-Liquor/Drugs/Toxic Vapors, sentenced to 72 hours in jail, fined a total of \$2,420.20, and placed on probation. Additionally, the court suspended his driver’s license, and required him to complete alcohol substance screening and the MADD impact panel (see ex. B; R.T. ,at 190-91).

Applicant enjoyed several months of sobriety following his June 2004 Dul incident and attended weekly therapy meetings with his licensed therapist (M), in addition to returning to AA (see exs. C and 31). Applicant estimates he attended more than 200 AA meetings over the course of seven months before suspending his attendance between 2005 and 2007 (see exs. 31 and 33; R.T., at 154-55, 186). At the time, his therapist described Applicant as an episodic alcohol abuser, who could enjoy extended periods of sobriety before returning to alcohol. Her April 2007 records report that his father served in the military and was often away from the family (see ex. 28). M reported that Applicant’s father had no history of drugs, alcohol, or abusive behavior and died in 2002 (ex. 28).

After suspending his AA meetings in 2005, Applicant resumed his drinking, convinced he could continue his drinking under control on his own (R.T., at 207-08). He continued drinking throughout 2005 and 2006. He apparently did not advise his counselor (M) of his resumption of drinking. When asked at the hearing, she could not recollect his telling her of his drinking resumption in 2005 (R.T., at 74).

In June 2007, Applicant relapsed on a business trip and became intoxicated in a local drinking establishment. He was subsequently arrested for public intoxication. He pled guilty to the charge, received time served, and was fined. Applicant could provide no real explanation for his relapse.

Concerned about his most recent relapse and arrest, Applicant first reported his arrest to his immediate supervisor (K). K put Applicant in touch with his employment assistance program (EAP), who promptly referred Applicant to Dr. D (see ex. 29; R.T., at 161-62, 170). Dr. D diagnosed Applicant in July 2007 with alcohol abuse and adjustment disorder on the Axis I of the DSM-IV's multi-axial assessment system. Dr. D identified Applicant's Axis IV stressors as isolation, lack of positive support, an unhappy marriage and a lack of community support. Dr. D reported that Applicant did not receive very much support from his employer's employment assistance program either.

With the instrumental influence of his sponsor, Applicant returned to AA in July 2007, along with five employees from his company (R.T., at 166-67). His sponsor relies heavily on the "Big Book's" 12-steps, and has steered Applicant to using the 12 steps. With the help of his sponsor and AA, Applicant has been able to maintain his sobriety since June 2007 (a period of almost four months). He received a three-month chip from AA commemorating his abstinence efforts (R.T., at 159). He credibly assures he has maintained his sobriety since June 2007 and has no desire to return to drinking (R.T., at 168-70). To ensure his EAP counselors of his regular AA attendance, he completes weekly attendance forms and faxes them to his EAP office (R.T., at 170).

Applicant has continued to receive outpatient counseling from M and is credited with making good progress (see ex. 30). She has treated Applicant periodically since 2004 and credits Applicant with maintaining a pattern of light to moderate drinking between 2004 and 2007. Based on her most recent observations of Applicant and his AA progress (supported by an excellent sponsor), she would adjust his diagnosis to episodic alcohol abuse in remission and scratch his secondary adjustment disorder (see exs. 28 and 32; R.T., at 81-82).

M has no basis to diagnose Applicant with binge drinking (no such diagnosis exists according to M) and attributes this terminology to Dr. D's basic diagnosis of alcohol abuse (R.T., at 82). M credits Applicant with having a strong spiritual program, excellent educational achievements, and clear goals for his future (R.T., at 52-53). Albeit, she continues to characterize Applicant as an episodic alcohol abuser (ex. 32; R.T., at 61).

Applicant's sponsor has been a consistent AA participant for over 18 years and has been Applicant's sponsor since July 2007 (see ex. 34; R.T., at 88-89). He credits Applicant with being very sincere about working hard, changing his life, and living sober. He and Applicant have regularly attended AA meetings together since July 2007, and he says Applicant has made great progress in completing the 12 steps assigned to him (ex. 34; R.T., at 90-91). Applicant is presently working on step 10 and is credited by his sponsor with being better than most candidates (R.T., at 91). The sponsor was aware of Applicant's slip in June 2007, and makes no distinctions between slips and lapses.

Applicant's immediate supervisor (K) describes Applicant as a responsible line manager who has been very forthcoming about his past problems with alcohol (see ex. 13). K credits Applicant with facing his alcohol problems and keeping her informed of his 2007 relapse and the progress he is making with his alcohol programs (ex. 13; R.T., at 149-50). Another supervisor familiar with Applicant's work describes him as organized, thorough in his work, and reliable (see ex. 14).

A co-worker (R) of Applicant who has worked with him for the past three years describes him as a responsible team member who has been rapidly promoted (R.T., at 108-10). R's spouse is the natural father of Applicant's current girlfriend (since early 2007), and R socializes with both Applicant and her stepdaughter (R.T., at 116-17).

Other co-workers familiar with Applicant's alcohol problem credit him with being highly trustworthy and responsible in his work (see exs. 15 through 17). One (see ex. 16) expressed familiarity with Applicant's attending AA 12-step meetings and reaching out in his community to help others. This co-worker describes Applicant as a kind, loving, and caring person in his work and personal relationships with his friends and daughter (ex. 16).

Applicant has a girlfriend (B), who is employed by the same employer as Applicant. She credits Applicant with accepting his responsibilities very seriously (R.T., at 127). She acknowledges attending a party with Applicant during their first months of dating where Applicant became intoxicated, and she remembers Applicant's consuming too much alcohol at home on another occasion (R.T., at 137-38). But she says Applicant was up-front with her about his June 7 alcohol-related incident and has shown considerable change in his lifestyle since his June 2007 incident (R.T., at 131-33). BT assures that Applicant has kept his supervisor, manager and friends aware of his past problem with alcohol and his current sobriety efforts (R.T., at 136).

B and Applicant spend much of their spare time together with Applicant's daughter (R.T., at 147-48). Applicant has visiting rights that permit him to see his daughter on Wednesdays of each week and on special occasions (R.T., at 148-49).

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by

judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the conditions that could raise a security concern and may be disqualifying (Disqualifying Conditions), if any, and all of the Mitigating Conditions, if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Criminal Conduct**

*The Concern:* “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.”

### **Alcohol Consumption**

*The Concern.* “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.”

### **Drug Involvement**

*The Concern:* “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.”

### **Burden of Proof**

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts

proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is a highly regarded network engineer for a defense contractor with a history of abusive alcohol consumption and illegal drug use, off and on, over a 25-year period. His alcohol history includes six alcohol-related incidents between 1990 and 2007. Applicant's past drug use involvement, his history of alcohol and drug-related incidents (seven in all between 1990 and 2007), and his recently diagnosed alcohol abuse reflect raise security concerns covered by Guidelines J, G, and H of the Adjudicative Guidelines.

#### **Applicant's alcohol/criminal conduct issues**

Applicant's five arrests and work-termination covered in the SOR cover alcohol-related offenses and raise major concerns over his risk of recurrent alcohol abuse. Those alcohol-related incidents that resulted in arrests/convictions outside of the immediate work place entail overlapping criminal conduct and invite overlapping concerns covered by the criminal conduct guidelines as well.

On the strength of the evidence presented, several disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be applied: 22(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," 22(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," and 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence."

Because six of Applicant's alcohol-related offenses are covered by arrests or charges that involve criminal conduct, they are covered by the guidelines for criminal conduct as well. Specifically, DC 31(a), "a single serious crime or multiple lesser offenses," applies. Although his abusive drinking the night before his scheduled business meeting created adverse consequences with his employer, his drinking did not



involve any covered criminal offense. Consequently, this episode of alcohol abuse is not specifically covered by the guideline for criminal conduct.

To his credit, Applicant has acknowledged his drinking problem and sought counseling and treatment for his recognized problem. He renewed his AA commitments following his July 2007 diagnosis from Dr. D, obtained a new sponsor, and maintained his sobriety for approximately four months before his hearing.

Still troubling and of ongoing security concern is Applicant's history of recurrent relapses following periods of treatment and AA participation, and his lack of any extended period of sustained abstinence. While M provides assurances of his sincere commitment this time to maintain his current track of sobriety with the help of AA and her outpatient counseling support, his sustained abstinence efforts are still relatively new (only four months since his diagnosis and five months since his last alcohol-related offense). This is not to suggest his renewed commitments to sobriety do not reflect positive changes in behavior supportive of sobriety. His efforts have drawn considerable praise from his treatment counselor (M). Favorable views of his progress from work colleagues who know him are also helpful in gauging the strength of his commitment to sobriety.

With his long history of alcohol-related incidents, and drinking abuses, relapses following treatment and counseling, and still relatively short time in sustained abstinence following his return to AA in July 2007, he is not in a position to apply any of the mitigating conditions covered by Guideline G. Each of the listed mitigating conditions are conjunctive and require all of the cited considerations to be satisfied. Applicant is still not able to do that at this stage of his recovery.

Taking into account both Applicant's history of alcohol abuse, his strong work record, the applicable guidelines and a whole person assessment of his most recent sobriety efforts (which have been roundly praised by his treatment counselors), conclusions warrant that his overall efforts, while encouraging, do not reflect sufficient evidence of sustained commitment to AA and its tenets of sobriety to convince he is no longer at risk of recurrence. In the past he has enjoyed considerable periods of sobriety only to return to episodic drinking that involved alcohol-related incidents away from work.

That Applicant is free of the stressful marriage that contributed so much to his episodic drinking abuses between 2001 and 2005 provides important reinforcement to his current sobriety efforts. He has certainly impressed his treatment counselors (both D and M) with his most recent sobriety efforts. His relapse history, however, remains a source of concern. Without more time in sustained sobriety than the four months he is credited with, it would not be prudent under this record to relax the time mitigation requirements of any of the mitigating conditions of the alcohol and criminal conduct guidelines. In Applicant's case, these mitigating conditions work conjunctively with each other.

Considering the record as a whole, Applicant fails to make a convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol. Without a more seasoned record of sobriety to rely on, Applicant's mitigation efforts are simply not enough at this time to warrant safe predictions that he is no longer at risk of judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the allegations covered by the alcohol and criminal conduct guidelines of the SOR.

### **Drug issues**

Besides alcohol, Applicant abused drugs over a considerable period of time. He used marijuana regularly between 1990 and 1998 and tried cocaine (between 1998 and 1999) and other illegal drugs (to include crystal meth-amphetamines, hash and LSD) in the 90s.

Applicant's recurrent use of meth-amphetamine is sufficient to invoke two of the disqualifying conditions of the Adjudicative Guidelines for drugs, *i.e.*, DC 25(a) "any drug abuse" and 25(c) "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." Records do not indicate Applicant has used any illegal drugs since 1999.

Applicant corroborates the absence of any record evidence of illegal drug use since 1999 with his own assurances that he has been drug-free since 1999. To be sure, misconduct predictions (to include return to illegal drug use), generally, may not be based on supposition or suspicion. See ISCR Case No. 01-26893 (Appeal Bd. October 2002); ISCR Case No. 97-0356 (App. Bd. April 1998). The Appeal Board has consistently held that an unfavorable credibility determination concerning an applicant is not a substitute for record evidence that the applicant used illegal drugs since his last recorded use, or based on his past use he is likely to resume drug usage in the future. See ISCR Case No. 02-08032 (Appeal Bd. May 2004). Based on Applicant's considerable period of demonstrated avoidance of illegal drugs (almost eight years now), he is in good condition to mitigate security concerns over the possibility of his resuming his use of illegal substances in the foreseeable future.

Applicant's avoidance of illegal drugs of every conceivable kind for almost eight years is sufficient under all the circumstances considered and whole assessment of Applicant to mitigate security concerns associated with his recurrent use and possession of illegal substances. Favorable conclusions warrant with respect to the allegations covered by sub-paragraphs 3.a through 3.g of Guideline H.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

## Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, and the factors listed above, I make the following formal findings:

GUIDELINE J (CRIMINAL CONDUCT):	AGAINST APPLICANT
Sub-para. 1.a:	AGAINST APPLICANT
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	FOR APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	AGAINST APPLICANT
GUIDELINE G (ALCOHOL):	AGAINST APPLICANT
Sub-para. 2a:	AGAINST APPLICANT
Sub-para. 2.b:	AGAINST APPLICANT
Sub-para. 2.c:	AGAINST APPLICANT
Sub-para. 2.d:	AGAINST APPLICANT
Sub-para. 2.e:	AGAINST APPLICANT
Sub-para. 2.f:	AGAINST APPLICANT
GUIDELINE H (DRUGS):	FOR APPLICANT
Sub-para. 3.a:	FOR APPLICANT
Sub-para. 3.b:	FOR APPLICANT
Sub-para. 3.c:	FOR APPLICANT
Sub-para. 3.d:	FOR APPLICANT
Sub-para. 3.e:	FOR APPLICANT
Sub-para. 3.f:	FOR APPLICANT
Sub-para. 3.g:	FOR APPLICANT

## Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge