

DATE: October 31, 2007

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In re: )  
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 ----- ) ISCR Case No. 07-01044  
 SSN: ----- )  
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 Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

Alison O’Connell, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

From 1998 to February 2006, Applicant consumed and sometimes binged on alcohol to the point that his judgment was impaired as evidenced by his illegal use of drugs in at least 11 different occasions. There is no evidence of illegal drug use or excessive alcohol consumption since February 2006. Considering the evidence as a whole, his favorable information is not sufficient to mitigate the security concerns raised by his behavior under the Guidelines for alcohol consumption, drug involvement, and personal conduct. Clearance is denied.

## STATEMENT OF THE CASE

On July 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts and security concerns under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct). The SOR informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information and submitted the case to an administrative judge for a security determination.<sup>1</sup> On July 25, 2007, Applicant answered the SOR and requested a hearing.

The case was assigned to me on August 29, 2007. The Notice of Hearing was issued on September 5, 2007, convening a hearing on October 3, 2007. The hearing was convened as scheduled. The government presented two exhibits, marked GE 1-2, to support the SOR. Applicant testified on his own behalf, and presented 11 exhibits, marked AE 1-11. DOHA received the transcript (Tr.) on October 11, 2007.

## FINDINGS OF FACT

Applicant admitted all the SOR allegations. His admissions are incorporated herein as findings of facts. After a thorough review of the record evidence, I make the following additional findings of fact.

Applicant is a 28-year-old senior information systems engineer who has worked for a Department of Defense (DoD) contractor since April 2006 (Tr. 36). He is single and has no children. He attended college from September 1997 to May 2002, and received a bachelor's degree in computer science. In January 2007, he started his masters degree in information systems with a concentration in management (Tr. 102).

Applicant's employment history reflects that after college he was unemployed from May 2002 to July 2003. From July 2003 to April 2006, Applicant worked for three difference companies. As part of the hiring process, he was required to participate in drug testing, which he passed. He also was subject to unannounced drug testing while in those job positions (Tr. 91). In April 2006, he was hired by his current employer and moved from his home state to his employer's state. There is no evidence he has mishandled or compromised classified information while working for his employer.

Applicant's security concerns arose as a result of his alcohol consumption and his illegal use of drugs. He began consuming alcohol at age 17 while attending high school. He consumed alcohol during parties and the weekends, usually sharing a six pack of beer with friends (Tr. 74). During college he consumed alcohol occasionally, drinking approximately a six pack of beer at a sitting during the weekends and at parties. He played inter collegiate soccer and did not drink alcoholic

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<sup>1</sup> See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised adjudicative guidelines (AG) to all adjudications and other determinations made under the Directive in which the SOR was issued on or after September 1, 2006.

beverages during the soccer season from June to October (Tr. 75). While in college, he binged on alcoholic beverages on at least two occasions at fraternity parties (Tr. 76).

At his hearing, Applicant initially claimed that after graduating from college he only consumed alcoholic beverages occasionally (Tr. 78). During cross-examination he admitted, however, that after college he went through a “spurt” when he drank one gallon of beer a day, one or two times a week, for about two months (Tr. 96-97). He reduced his drinking after receiving a job offer around July 2003.

Applicant testified that since April 2006, when he started working for his current employer, he only consumes alcohol occasionally (during ball games and parties), and in moderation (Tr. 85). He currently consumes between three to six beers at a sitting, approximately three times a month (Tr. 79). He does not believe he has a problem with alcohol. He modified his drinking habits for several reasons, i.e., he wanted to do well at his current job, he was concerned about his health, and disappointing his parents.

Applicant’s illegal use of drugs is related to his alcohol consumption. He illegally used Percocet (in March 2005) (Tr. 37-40), Vicadin (three times in April 2005) (Tr. 45-47), and Darvocet (in February 2006) to enhance the effects of alcohol (Tr. 68-69). He did not have a prescription when he used these drugs. He used these drugs before going out to parties so that he could get “buzzed” quickly without having to consume too much alcohol to get into a dancing mood (Tr. 40). He illegally used Vicadin to get rid of the effects of his hangovers. His then girlfriend had a prescription for Percocet and she gave Percocet to him. She also gave him the Vicadin and the Darvocet, which she acquired from her friends.

Applicant provided several explanations for his illegal use of drugs, i.e., he was curious about the effects of the drugs, and the effect of the drugs mixed with alcohol; he self-medicated himself for his hangovers; and he broke-up his relationship with his girlfriend of six and one-half years (Tr. 44-45). He claimed he never used drugs before age 25, even while at college. He explained he was a member of the Boy Scouts until he was 18 years old and stayed away from drugs. Moreover, his two older brothers were addicted to drugs. His 39-year-old brother was addicted to cocaine, underwent treatment, and has been clean for 15 years. His 38-year-old brother was addicted to “crystal meth,” underwent treatment, and has been clean for two years (Tr. 94). He never used drugs with his brothers. He experienced his family being ripped apart by his brothers’ addiction and he did not want to add to his parent’s pain (Tr. 43). His father was an alcoholic and, when Applicant was growing up he advised him against using illegal drugs and drinking alcohol (Tr. 83).

In September 2005, Applicant used ecstasy while at a party where he had been drinking alcohol (Tr. 49). A friend offered it to him, and he took it out of curiosity. He used cocaine twice during September 2005, and once in November 2005 (Tr. 53-59). He explained he used cocaine the first time out of curiosity. The second time he claimed he was somewhat forced to use it. He accompanied his friend to purchase cocaine and Applicant was too scared to refuse it when it was offered. He used marihuana in September 2005, because of peer pressure (Tr. 63-64). Applicant illegally used Adderall twice in February 2006. Both times he had been drinking the night before and woke up tired and with a bad hangover. A friend suggested he take the Adderall to boost up his energy level and help him get rid of the hangover, and he did. Applicant did not have a prescription for the Adderall (Tr. 65-66). Applicant knew his use of these drugs was illegal.

Applicant averred he has not used any drugs illegally since February 2006, when he received the job offer from his current employer. He knows that such behavior will not be tolerated, and that his job is at stake if he were to use illegal drugs. He has not participated in any alcohol or drug rehabilitative treatment or counseling (Tr. 71). Applicant has no intention to use drugs illegally ever again. He is concerned about losing his job, his health, and not causing any more pain and disappointment to his parents (Tr. 73). His parents are not aware of his use of drugs. When asked to explain why he experimented with drugs if he knew that his brothers' drug abuse had ripped his family apart, Applicant stated "I knew it was a mistake, and I guess I didn't think about my family at the time" (Tr. 93).

Applicant claimed he no longer has contact with most of the friends with whom he used drugs and/or consumed alcohol. When he was hired for his current job he moved from his home state to his current state of residence. He only visits his family at his home state every two to three months, and has infrequent contacts with his high school and college friends (Tr. 87). He still has infrequent contact with at least three of the people with whom he used drugs, but he claimed they no longer use illegal drugs.

Applicant expressed remorse for his past behavior. He promised never to engage in such behavior again. He considers himself to be reliable and trustworthy, and asserts he has good judgment. In support of his assertions, he submitted a performance evaluation report (AE 1). His supervisors and coworkers consider Applicant technically proficient, reliable, and recommended him for a position of responsibility. He is characterized as a hard-working, honest person, with outstanding duty performance, and excellent work ethics (AE 2-11). In general, his references attest to Applicant's honesty, trustworthiness, good judgment, and dependability. Because of his significant contributions to his employer, he was awarded his company's annual achievement award. Moreover, his references confirm Applicant distanced himself from old friends who were bad influences, and note his willingness to consume alcohol in moderation.

## POLICIES

The Directive sets forth adjudicative guidelines (AG) which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each AG applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.<sup>2</sup>

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<sup>2</sup> AG ¶ 2(a). "... The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of "the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . . ."

Having considered the record evidence as a whole, I conclude Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) are the applicable relevant AGs.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>3</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish by substantial evidence<sup>4</sup> a *prima facie* case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the burden of persuasion.<sup>5</sup> The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.<sup>6</sup>

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

### **CONCLUSIONS**

Under Guideline H, the government's concern is 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 ¶ 24.

The government established its case by showing that from March 2005 to February 2006, Applicant used illegal drugs, i.e., cocaine (twice), and marihuana and ecstasy (once each). During the same period of time, he illegally used prescription drugs (Percocet and Darvocet once each, Vicadin

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<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive ¶ E3.1.32.1.

<sup>5</sup> *Egan*, *supra* n.3, at 528, 531.

<sup>6</sup> See *id.*; AG ¶ 2(b).

three times, and Adderall twice) without a prescription. Drug involvement disqualifying conditions AG ¶ 25(a): *any drug abuse*, applies.

Applicant's evidence raised several mitigating conditions that I considered potentially applicable under AG ¶ 26:

(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; and,*
- (3) an appropriate period of abstinence.*

According to his testimony and character references, Applicant has not used drugs illegally for approximately 19 months. Applicant disassociated himself from most of his drug-using friends, and has avoided environments where drugs are used. His change in behavior resulted from his work-related move to another state, as well as his desire to remain drug abstinent, to consume alcohol in moderation, to pursue a healthy lifestyle, and to protect his job. His testimony and change in lifestyle demonstrate his intent not to use illegal drugs and to consume alcohol in moderation. Mitigating condition AG ¶ 26(b) applies.

Based on my evaluation of the record evidence as a whole,<sup>7</sup> I conclude AG 26(a) does not apply. I find Applicant's questionable behavior recent, and it raises serious about his judgment and willingness to follow rules and regulations. Applicant's father was an alcoholic and counseled him against the dangers of drugs and abusing alcohol. Two of his brothers were addicted to illegal drugs and their addiction "ripped apart" his family. Applicant started using drugs at age 25, after completing college, because he broke-up with his girlfriend, and he was curious about the effects of drugs combined with alcohol.

His drug abuse is intertwined to his alcohol consumption. He mixed illegal drugs and alcohol to enhance the effects of the alcohol. He then used illegal drugs the next day to arrest the adverse effects of his bad hangovers. Considering his history of excessive alcohol consumption, Applicant's combined abuse of alcohol and drugs heightens the security concerns raised by his behavior. Applicant continues to consume alcohol albeit allegedly in moderation. He presented no evidence to show he has participated in any drug or alcohol treatment or counseling. Because of the number of times he used illegal drugs, and his history of alcohol consumption, I find his use of drugs to be frequent. Considering the totality of the circumstances in Applicant's case, I find his favorable evidence fails to establish his questionable behavior is not likely to recur. Moreover, his behavior cast serious doubts on his trustworthiness, judgment, and willingness to comply with the law.

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<sup>7</sup> The AGs do not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) The Judge is required to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006).

Under Guideline G, the government's concern is that 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.

The government established its case by showing that from about 1998 to February 2006, Applicant consumed, and sometimes consumed alcohol to the point that his judgment was impaired as evidenced by his illegal use of drugs on at least 11 different occasions. AG ¶ 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*; and AG ¶ 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*, apply.

Applicant has acknowledged his problems with alcohol, and provided evidence to show he is taking action to overcome this problem. He has established a pattern of responsible use as demonstrated by his outstanding work performance. There is no evidence he has been involved in any misconduct related to alcohol or drug use.

Notwithstanding, for the same reasons outline in the discussion of Guideline H (above), I find Applicant's alcohol related concerns are recent. His favorable information fails to establish his questionable behavior is not likely to recur, and his questionable behavior still casts doubts on Applicant's good judgment and trustworthiness.

Under Guideline E (Personal Conduct) the government's concern is that 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 ¶ 15.

The government established its case by showing that from about 1998 to February 2006, Applicant consumed, and sometimes consumed alcohol to the point that his judgment was impaired as evidenced by his illegal use of drugs in at least 11 different occasions. Applicant's behavior showed questionable judgment, untrustworthiness, and an unwillingness to comply with rules and regulations. Personal Conduct disqualifying condition AG ¶ 16(e): *personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .*, applies.

Applicant's use of illegal drugs constitute serious offenses, and as such they cannot be easily dismissed. For the same reasons discussed under Guidelines H and G, incorporated herein, I consider Applicant's behavior under Guideline E not mitigated by the passage of time. Considering the evidence as a whole, not enough time has transpired since his questionable behavior for Applicant to establish that his behavior is unlikely to recur. Additionally, Applicant failed to disclosed his past questionable behavior to his parents. Applicant's friends and supervisors provided him with excellent recommendations. It is not clear, however, whether his character references knew the extent of Applicant's drug and alcohol involvement when they provided their recommendations. Applicant has failed to reduce the possibility of vulnerability to exploitation, manipulation, or duress. After

considering all the personal conduct mitigating conditions under AG ¶ 17, I find that none of the mitigation conditions apply.

I have carefully weighed all evidence and applied the disqualifying and mitigating conditions as listed under the applicable AGs. I specifically considered Applicant’s testimony; his age, education, work experience, and the testimony of his character references. I also considered that there is no evidence he has engaged in questionable conduct for over one and one-half years. In light of the totality of the circumstances, I find Applicant’s favorable evidence is not sufficient to mitigate the security clearance concerns.

**FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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| Paragraph 1, Drug Involvement<br>Subparagraphs 1.a-1.g    | AGAINST APPLICANT<br>Against Applicant |
| Paragraph 2, Alcohol Consumption<br>Subparagraphs 2.a-2.d | AGAINST APPLICANT<br>Against Applicant |
| Paragraph 3, Personal Conduct<br>Subparagraph 3.a         | AGAINST APPLICANT<br>Against Applicant |



**DECISION**

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 a security clearance for Applicant. Clearance is denied.

Juan J. Rivera  
Administrative Judge