



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-01396

**Appearances**

For Government: Michelle Tilford, Esquire, Department Counsel

For Applicant: *Pro se*

December 7, 2018

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**Decision**

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ROSS, Wilford H., Administrative Judge:

On December 8, 2015, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On May 23, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J (Criminal Conduct) and G (Alcohol Consumption). The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on August 1, 2017, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) A complete copy of the file of relevant material (FORM) prepared by Department Counsel,

consisting of Items 1 to 5, was provided to Applicant on September 6, 2017. Applicant received received the file on September 21, 2017.<sup>1</sup>

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional information. The case was assigned to me on January 17, 2018. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>2</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

### **Findings of Fact**

Applicant is 58 and single. He has an associate's degree and has been employed by a defense contractor since 1982 as a production planner. He has held a security clearance since approximately 1984 and seeks to retain national security eligibility for access to classified information in connection with his employment. (Item 3 at Sections 12, 13A, and 25.)

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<sup>1</sup> Department Counsel submitted five Items in support of the SOR allegations. Item 4 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 25, 2016. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Item 4 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 2, which described the potential admissibility of Item 4. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

<sup>2</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

## **Paragraph 1 (Guideline J: Criminal Conduct)**

The Government alleged in this paragraph that Applicant is ineligible for national security eligibility because he has a history of criminal conduct. Applicant admitted all three allegations under this paragraph.

1.a. Applicant was arrested for Driving While Intoxicated (DWI) in April 2011. Applicant pled guilty and was sentenced to two years of probation, and 12 months and 5 days in jail, with 11 months and 25 days suspended. Appellant stated that he spent two weekends at the city jail farm. (Item 3 at Section 22.)

1.b. Applicant was arrested a second time for DWI on December 18, 2015. This was about a week after signing his e-QIP (Item 3), in which he discussed his first DWI arrest. He pled guilty on April 19, 2016, and was sentenced to spend ten days in jail, three years of probation, suspension of his driver's license for three years, and he was required to take and complete an Outpatient Substance Abuse Program. His probation will end in approximately April 2019. (Item 5.)

1.c. Applicant admitted that he drank alcohol on July 22, 2016, while taking a 26-week substance abuse program. His alcohol use was discovered because Applicant was tested by the program. His treatment program was extended from 26 weeks to 36 weeks. Applicant stated in his response to DoD CAF interrogatories that he completed the program on March 23, 2017. Applicant has been diagnosed with Moderate Alcohol Use Disorder. He further stated that he goes to Alcoholics Anonymous (AA) one to two times a week. Applicant submitted no documentary information from the counseling program to support his statement that he had successfully completed it. (Item 5.)

## **Paragraph 2 (Guideline G: Alcohol Consumption)**

The Government alleged in this paragraph that Applicant is ineligible for national security eligibility because he abuses intoxicants to excess. Applicant admitted the sole allegation under this paragraph, which states that the conduct set forth under Paragraph 1, above, is cognizable under this paragraph as well.

Applicant stated in his response to interrogatories that he stopped drinking alcohol on July 22, 2016. He further stated that he stopped using alcohol because he had received a second DWI, and his personal health. Applicant also stated that he had no intention of using alcohol in the future. (Item 5.)

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## 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 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 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, "Any doubt concerning personnel being considered for national security eligibility 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.

According to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

Finally, as emphasized in Section 7 of EO 10865, "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

### Paragraph 1 (Guideline J, Criminal Conduct)

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Three conditions apply:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
- (c) individual is currently on parole or probation.

Applicant had alcohol-related arrests and convictions for Driving While Intoxicated in 2011 and 2015. He is currently on probation for the 2015 arrest until April 2019. All three of these disqualifying conditions apply.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security 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;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's conduct, as described in the Findings of Fact, was serious, recent, and criminal. He is on probation until April 2019. He has introduced insufficient evidence to support a finding that he has mitigated his misconduct under this guideline. Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline G: Alcohol Consumption)**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline at AG ¶ 22 contains seven disqualifying conditions that could raise a security concern and may be disqualifying. Six conditions possibly apply to the facts 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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed;

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

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

Applicant has a history of drinking to excess, as shown by the two alcohol-related incidents set forth in the SOR and discussed above. The last incident was in December 2015. He entered treatment in 2016, and the treatment was extended from twenty-six weeks to thirty-six weeks because he drank while in the program, which violated program rules and the pertinent court order.

The guideline at AG ¶ 23 contains four 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 judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

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

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

None of the mitigating conditions were established in this case. Applicant had two alcohol-related arrests for Driving While Intoxicated, the last in December 2015. He states he successfully completed his outpatient treatment, but did not provide any supporting documentation. He states that he has been abstinent from alcohol since July 2016, but once again we have no evidence to support Applicant's statement. Applicant appears to have difficulty accepting or admitting he has a problem with alcohol. Considering all the available evidence, I find that not enough time has passed without an incident to be confident that he will not resume drinking and acting irresponsibly while under the influence. Paragraph 2 is found against Applicant.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility and 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 facts and circumstances surrounding this case. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. In sufficient time has passed since his second DWI conviction to demonstrate rehabilitation, and the likelihood or recurrence remains significant. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Criminal Conduct and Alcohol Consumption.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge