



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-02415
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

02/13/2019

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**Decision**  
\_\_\_\_\_

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the alcohol consumption security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 3, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on November 2, 2017, and elected to have a hearing before an administrative judge. The case was assigned to me on June 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on June 22, 2018, scheduling the hearing for July 18, 2018. I convened the hearing as scheduled.

I appended to the record as Hearing Exhibits (HE) I and II, respectively, the Government's discovery letter and exhibit list. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, called one witness, and submitted Applicant's Exhibits (AE) A through C, which were admitted in evidence without objection.

At Applicant's request, I held the record open until August 1, 2018, for the receipt of additional evidence. Applicant timely provided additional evidence, which I marked as AE D and admitted in evidence without objection. I marked Department Counsel's email, in which she indicated no objection to Applicant's additional evidence, as HE III. DOHA received the hearing transcript (Tr.) on July 26, 2018.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b and denied SOR ¶ 1.c. She is 47 years old. She married in 1997 and divorced in 2014. She has two adult children.<sup>1</sup>

Applicant graduated from high school in 1989. She then enlisted in the U.S. military and honorably retired in 2009. She earned a bachelor's degree in 2016. She has worked for various defense contractors since 2009. She has worked for her current employer, a defense contractor, since approximately 2015. She was first granted a security clearance in approximately 1991.<sup>2</sup>

Applicant started consuming alcohol at age 18, after she enlisted in the U.S. military. She acknowledged that she drank to excess, at times, from age 18 to 24. She binge drank approximately eight to nine beers twice weekly on the weekends. From age 24 to 39, she drank three to four beers or shared a bottle of wine with her then-husband once weekly.<sup>3</sup>

In December 2011, Applicant was charged and convicted of driving while intoxicated (DWI) 1st offense (SOR ¶ 1.a). This was her first alcohol-related offense. She went to a friend's retirement party and had two glasses of wine. She learned later that because the wine she consumed was homemade, it had a higher alcohol content than store-bought wine. She did not feel impaired. On her way home, she picked up a friend at a nearby bar who asked her for a ride. She was pulled over as she was dropping her friend off at his home. When the police asked her if she had been drinking, she replied "Yes." She was administered a breathalyzer and her blood alcohol content (BAC) was .10%. She was sentenced to 60 days suspended, driver's license restriction

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<sup>1</sup> Response to the SOR; Tr. at 6, 22, 36-38; GE 1.

<sup>2</sup> Tr. at 5-8, 20-21, 59-72; GE 1.

<sup>3</sup> Tr. at 21-23, 38-40, 50-51; GE 2.

for six months, ordered to complete a 20-hour safe driving course, and fined \$450. She complied with the court's sentence.<sup>4</sup>

In October 2013, Applicant was charged and convicted of DWI 2nd offense (SOR ¶ 1.b). This was her second alcohol-related offense and the last time she drove after drinking. After work that day, she went directly to class. She and several classmates grabbed drinks at a bar across the street after class. She had three beers. She last ate at noon. She was tired but she did not feel impaired. She was pulled over about one mile from home. The police officer told her that she was driving erratically, and she replied "Yes" when asked if she had been drinking. She was administered a breathalyzer and her BAC was .11%.<sup>5</sup>

Applicant was sentenced to 180 days with 150 suspended; probation for three years; suspended driver's license for four months, then driver's license restriction for three years with an interlock device installed on her car for six months; ordered to attend alcohol counseling and Alcoholics Anonymous (AA), and abstain from alcohol; and fined \$700. She complied with the court's sentence. She served 15 days in jail; she successfully completed probation; she did not consume any alcohol during her three-year probation period; and she attended counseling once monthly and two AA meetings weekly for 36 weeks. She did not receive an alcohol diagnosis, but learned through counseling how to handle her tendency to make decisions impulsively and how to exercise mindfulness.<sup>6</sup>

In March 2015, Applicant was arrested and charged with probation violation, due to an alcohol reading registering on the interlock device installed on her car (SOR ¶ 1.c). She denied that she consumed alcohol in violation of her probation. She testified that she appeared in court to fight the charge, was found not guilty, and the court ordered the removal of the interlock device, which was done in July 2015. She believed that a court record reflecting that she was found guilty of the violation was an error. The same record reflected that she did not receive a sentence from the court in connection with this offense. She provided a copy of another court record reflecting that she was found not guilty for the same offense, and the court ordered the removal of the interlock device in June 2015.<sup>7</sup>

Applicant testified that she resumed consuming alcohol in November 2016, when she had a glass of wine with Thanksgiving dinner. She consumes one drink once monthly, and testified that she does not have a compulsion to drink more. She has no future intentions of driving after drinking. On the occasions where she knows she will have a drink and have to get home, she plans ahead and arranges for alternate transportation. She attributed her heavy drinking in 2011 and 2013 to adjusting to life

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<sup>4</sup> Tr. at 21-23, 38-40, 50-51; GE 1, 2, 3, 4; AE A.

<sup>5</sup> Tr. at 23-31, 34-35, 38, 40-49, 51; GE 1, 2, 3, 4; AE A, B.

<sup>6</sup> Tr. at 23-31, 34-35, 38, 40-49, 51; GE 1, 2, 3, 4; AE A, B.

<sup>7</sup> Tr. at 30-34, 51-58; GE 2, 4, 5; AE D.

after military retirement, her 2010 separation, and her subsequent divorce, while simultaneously working and attending school. She testified, though, that she never felt she abused alcohol, and her alcohol use did not negatively factor into her previous marriage. She testified that other than a 2013 speeding ticket, her driving record is clean.<sup>8</sup>

Applicant indicated that her two DUIs are common knowledge. She testified that she told her witness and her character reference about her DUIs. Her witness was her team supervisor since 2015. He testified that he was aware that Applicant had at least one DUI. He had never witnessed Applicant report to work under the influence of alcohol. He had occasions to observe her consume alcohol and did not witness her consume irresponsibly. He also relied on her to serve as a designated driver for a fellow team member several times between 2015 and 2018. He described Applicant as one of his best analysts on a team of 23, and an exceptional worker. Her character reference was her direct supervisor since March 2017. He wrote that he was “extremely impressed by [Applicant’s] work ethic and reliability,” and described her as a trustworthy individual.<sup>9</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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(a), 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 national security eligibility will be resolved in favor of the national security.”

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 to obtain a favorable security decision.

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<sup>8</sup> Tr. at 22-30, 38, 42-45, 48-49, 51; GE 3.

<sup>9</sup> Tr. at 35-36, 56-72; GE 2; AE C.

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 safeguard 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 Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline G, Alcohol Consumption**

The security concern 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 notes conditions that could raise security concerns under AG ¶ 22. The disqualifying conditions potentially applicable in this case include:

(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; and

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

Applicant has a pattern of excessive alcohol consumption and alcohol-related incidents. AG ¶¶ 22(a) and 22(c) are applicable. Applicant denied that she consumed alcohol in March 2015, in violation of her probation from her 2013 DWI conviction. She provided a court record to corroborate her testimony that she was found not guilty of the offense, and that the court ordered the removal of the ignition interlock device installed as a result of the underlying DWI conviction. AG ¶ 22(g) has not been established.

AG ¶ 23 provides the following conditions that could mitigate 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; and

(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.

Applicant's excessive alcohol consumption and two DWI convictions occurred under circumstances that are unlikely to recur. She was adjusting to life after military retirement, her 2010 separation, and her subsequent divorce, and simultaneously working and attending school. She complied with the court's sentence for both convictions, to include counseling once monthly for 36 weeks after her 2013 DWI conviction. Through such counseling, she learned how to handle her tendency to make decisions impulsively and how to exercise mindfulness.

Since Applicant began consuming alcohol again in November 2016, she consumes one drink once monthly, and she testified that she does not have a compulsion to drink more. She has no future intentions of driving after drinking. On the occasions where she knows she will have a drink and have to get home, she plans ahead and arranges for alternate transportation. Her witness testified that he has relied on her to act as a designated driver for a fellow team member several times between 2015 and 2018. I find that her two DWIs are not recent, are mitigated by the passage of time, and do not continue to cast doubt on her current reliability, trustworthiness, and judgment. She has also demonstrated a clear pattern of modified consumption. AG ¶¶ 23(a) and 23(b) are applicable.

### **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 eligibility for 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the alcohol consumption security concerns.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge