



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



In the matter of: )  
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----- ) ISCR Case No. 17-03558  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government:  
Adrienne Driskill, Esquire, Department Counsel

For Applicant:  
Ryan Nerney, Esquire  
The Edmunds Law Firm

February 6, 2019

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant had three alcohol-related arrests between 2003 and 2016. He is currently on probation for the last offense, and stopped drinking less than a year before the record closed. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 31, 2016. (Government Exhibit 1.) On October 26, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol

Consumption) and J (Criminal Conduct). The action was taken under Executive Order 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) with attachments on December 1, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 30, 2018. The case was assigned to me on February 6, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 8, 2018. I convened the hearing as scheduled on April 30, 2018. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through P, which were also admitted without objection. Applicant requested that the record remain open for the receipt of additional documentation. Applicant submitted a revised copy of Applicant Exhibit M, which provided better clarity of that exhibit, and Applicant Exhibit Q in a timely fashion, and they were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 8, 2018.

### **Findings of Fact**

Applicant is 49, separated from his wife, and has two children. He is seeking to retain a security clearance in connection with his work with the DoD.

Applicant graduated from the United States Naval Academy and served on active duty with the Navy from 1992 through 2015, when he retired as a commander (O-5). He has two master's degrees. He has worked for his present employer since 2015 as an acquisition management professional. (Government Exhibit 1 at Sections 12, 13A, and 15; Appellant Exhibits C, D, E, and O.)

#### **Paragraph 1 (Guideline G: Alcohol Consumption)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he uses intoxicants to excess. Applicant admitted all the allegations in the SOR, with explanations.

Applicant had been a habitual alcohol user for many years. Starting around 2000, he drank throughout most of the rest of his military career. Other than several brief periods of abstinence, the longest lasting several months, he drank almost daily, often having blackouts on weekends. (Tr. 20-22, 26-28, 51-52.)

Applicant's first alcohol-related arrest occurred on August 23, 2003, when he was attending an advanced education course for the Navy. He had gone out with friends and drank too much, then was arrested when he attempted to drive home. He plead nolo

contendere and was sentenced to probation for five years, along with a fine, various alcohol-education courses, and jail time. Applicant successfully completed all aspects of the sentence. While Applicant continued to drink excessively from 2003 to 2011, he did not have any alcohol-related arrests. (Government Exhibits 2 and 3; Applicant Exhibit L; Tr. 22-26, 52.)

The second arrest occurred on November 16, 2014, when Applicant was assigned to a major Navy command. He and his wife were at a formal dinner where he became extremely intoxicated. Applicant and his wife had a fight, and he began to walk home. Eventually, he stopped and fell asleep on the side of the road. He was arrested by police for Disorderly Conduct and Public Intoxication. He spent the night in the drunk tank. The decision was made not to press charges and Applicant was released in the morning with no further proceedings. (Government Exhibits 3 at 9, 4, and 5; Tr. 28-31, 53.)

After his retirement in early 2015 Applicant's drinking increased. Applicant admitted that his drinking affected his work, though he stated that he was never under the influence of alcohol at work. He would leave work early to meet friends and drink, or occasionally would not come into work after drinking the night before. (Government Exhibit 2 at 6; Tr. 46-47, 63-65.)

Applicant's third alcohol-related arrest occurred on March 17, 2016. This was 16 months after his last arrest. Applicant became extremely intoxicated on St. Patrick's Day. He drove with a high blood-alcohol level and was arrested after going the wrong way on a one-way street. Applicant plead guilty and was sentenced to probation for five years, a fine, to perform public service, and to attend various alcohol-related education programs. He completed all the requirements of his sentence, except his probation that runs until 2021. (Applicant Exhibit M; Tr. 32-37, 54-56.)

Around the time of his last arrest Applicant began to realize that he had problems with alcohol. At that point he began voluntarily getting personal therapy. Applicant has attended therapy with several counselors. One of them diagnosed Applicant with a Substance Use Disorder. (Applicant Exhibits A, K, and N; Tr. 39-43, 65-69.)

Applicant also began attending AA on a regular basis beginning in March 2016, though he continued to drink, sometimes heavily, for about a year after starting AA. He has a sponsor and stated he has been clean and sober since June 23, 2017. Applicant stated that AA is part of his life, and he is working at creating a sober lifestyle for himself. (Applicant Exhibits P and Q; Tr. 37-41, 43-48, 56-62, 68-73.)

## **Paragraph 2 (Guideline J: Criminal Conduct)**

The Government alleged in this paragraph that Applicant is ineligible for national security eligibility because he has engaged in conduct of a criminal nature. Applicant admitted the single allegation with explanations.

2.a The SOR alleged the three arrests discussed above under Paragraph 1 are also cognizable under this paragraph as criminal conduct.

## **Mitigation**

Applicant's military records show that he had a very successful career. His fitness reports were outstanding, showing him to be an officer of ability. (Applicant Exhibits G, H, and O.)

Applicant has been successful at his civilian job, as shown by his annual evaluations. Applicant's job leader, and career manager, wrote a letter of recommendation. He stated, "[Applicant] has been very open and honest about the legal troubles that he has faced and his journey to recover from alcohol abuse." (Applicant Exhibits F, I, and J.)

## **Policies**

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (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. Two 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; and

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

Applicant has a long history of drinking to excess, as shown by the three alcohol-related incidents set forth in the SOR and discussed above. The last incident was in March 2016, two years before the record closed in this case. Applicant stated that he has not had anything to drink since June 23, 2017, less than a year before the record closed. He is on probation until 2021. Both of the cited conditions apply.

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 completely established in this case. Applicant had three alcohol-related arrests, the last in March 2016. As stated, Applicant will be on probation until 2021, and continued to drink until June 2017. He appears to have made recent strides towards sobriety while serving probation, but his problem is of long duration. Considering all the available evidence, I find that not enough time has passed without an incident to establish confidence that he will not resume drinking and acting irresponsibly while under the influence. The Alcohol Consumption guideline is found against Applicant.

## **Paragraph 2 (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 three alcohol-connected criminal incidents between 2003 and 2016. He is currently on probation until 2021 for his last DUI conviction.

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 had gone almost two years without an alcohol-related criminal incident as of the date of his hearing. However, as stated above, his sobriety is in its early stages. Based on the available record, it is not possible to say with any certainty that alcohol-related criminal incidents will not happen in the future. Of particular concern is the fact that he is still on probation. Not enough time has passed to make a positive decision in Applicant's favor. Guideline J 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 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the security significance of his alcohol use and related criminal conduct. His two post-retirement incidents occurred 16 months apart, and he continued drinking for 15 months after the serious DUI in March 2016. His recent abstinence while serving probation is commendable, but is not yet sufficient to establish rehabilitation or confidence that recurrence is unlikely. Overall, the record evidence does create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

## 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 G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline J:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge