



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00314
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2019

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

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 26, 2018, 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 (EO) 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 the DOD on June 8, 2017.

Applicant responded to the SOR on March 13, 2018, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 11, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on April 27, 2018. Applicant did not respond to the Government's FORM. The case was assigned to me on July 26, 2018. The Government's documents identified as Items 1 through 5 are admitted in evidence without objection. Other than his Answer to the SOR, admitted into evidence as Item 2, Applicant failed to submit any additional documentation.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. He is 27 years old. He obtained a high-school diploma in 2009, and he attended some college from 2011 to 2012 but did not earn a degree. He has worked as a material handler for a defense contractor since August 2016. He previously worked for another defense contractor from March 2015 to August 2016. He has never held a DOD security clearance. As of his August 2016 security clearance application (SCA), he had never been married and did not have any children.<sup>1</sup>

Applicant has consumed alcohol, at times in excess and to the point of intoxication, since after he graduated from high school. When he was underage, he typically drank two to four beers once to twice monthly at house parties. Between ages 21 to 24, he drank around two to eight beers almost nightly while socializing with friends. From ages 24 to 26, he decreased his alcohol consumption because he tried to become more responsible. He did not like the person he had become after receiving his second driving under the influence (DUI) charge in March 2015, as discussed below. He no longer enjoyed feeling hung over. As of his 2017 background interview, he consumed five to six beers on the weekends while socializing with friends.<sup>2</sup>

In March 2012, at age 20, Applicant was arrested and charged with DUI. He was at a party with a friend and he drank five to six beers. He thought he was in good condition to drive, but he wrecked his car in a ditch on his way home. He failed a field sobriety test. He pled guilty and was sentenced to probation and fined. He was ordered to participate in an alcohol assessment, attend a victim impact panel, and enroll in an alcohol and drug substance abuse course. He completed the alcohol classes in September 2012, and he was on probation from around August 2012 to June 2013. A court record corroborates Applicant's indication in his SCA and background interview that this DUI was dismissed in around January 2013.<sup>3</sup>

In February 2015, Applicant was terminated from employment due to multiple late arrivals and absences. He indicated in his background interview that he likely had a week's worth of late arrivals and three to four absences in the last several months of his

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<sup>1</sup> Items 1-4.

<sup>2</sup> Item 4.

<sup>3</sup> Items 1-5.

employment. He was late and absent because he partied and drank with friends at bars, was hungover, tired, and did not feel like working.<sup>4</sup>

In March 2015, Applicant was arrested and charged with DUI and speeding. He was at a restaurant with a friend. Over the course of six to seven hours, he drank at least 12 beers. As he was driving, he was stopped by a police officer for speeding. He failed a field sobriety test. The speeding charge was dismissed. He pled guilty to DUI and was sentenced to jail for one year, suspended; probation for one year; license suspension; and fined. He was again ordered to participate in an alcohol assessment, attend a victim impact panel, and enroll in an alcohol and drug substance abuse course. He was also ordered to complete 80 hours of community service. He was on probation from September 2015 to June 2016, and he completed the court's requirements.<sup>5</sup>

In November 2015, Applicant received a written warning from his employer. The warning was for his failure to call or show for work. The previous evening, he was out drinking and watching football with a friend. He overslept.<sup>6</sup>

In September 2017, Applicant was arrested and charged with public intoxication and resisting an officer. He and a friend were celebrating a holiday weekend at a bar, and he drank eight to nine beers and two shots of hard liquor. He walked back to his apartment, which was around one mile from the bar, when he was arrested in his apartment complex parking lot. He was difficult with the arresting officer because he was drunk and upset. He pled no contest and was fined.<sup>7</sup>

In his 2017 background interview, Applicant indicated that such alcohol-related incidents were unlikely to recur because he was a changed person. He indicated that he stopped drinking during the week and on Sundays because it interfered with work and he did not like the person he was. He indicated that his family and friends are aware of his alcohol-related incidents. He also indicated that he has never received an alcohol-related diagnosis.<sup>8</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.

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<sup>4</sup> Items 1-4.

<sup>5</sup> Items 1-5.

<sup>6</sup> Items 1-4.

<sup>7</sup> Items 1, 2, 4.

<sup>8</sup> Item 4.

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(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 "[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.

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 EO 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* EO 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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is 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 pattern of excessive alcohol consumption and alcohol-related incidents away from work and at work. AG ¶¶ 22(a), 22(b), and 22(c) are applicable.

AG ¶ 23 provides the following relevant 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 pattern of excessive alcohol consumption and alcohol-related incidents did not happen under unusual circumstances that are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and judgment. His termination from one employer and warning from another in 2015 due to his alcohol-related conduct, his 2015 DUI conviction, and his 2017 public intoxication conviction are recent and not mitigated by the passage of time. While he indicated that he has changed his alcohol consumption, he has not yet demonstrated a clear pattern of modified consumption. AG ¶¶ 23(a) and 23(b) are not established.

### **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 this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge