



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



In the matter of: )  
)  
) ISCR Case No. 18-01435  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

06/06/2019

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised under Guideline G and Guideline E. He had several alcohol incidents, while holding a security clearance, and failed to notify his security officer. Eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on July 15, 2016. On August 24, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline G, alcohol consumption and Guideline E, personal conduct. Applicant answered the SOR on September 8, 2018, and requested a hearing before an administrative judge (Answer). The Government was ready to proceed on October 19, 2018, and the case was assigned to me on December 4, 2018. On December 13, 2018, I issued an order to both parties to produce their evidence by December 26, 2018, and the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 10, 2019. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 5 were admitted, without objection. Applicant testified and Applicant's Exhibits (AE) A through C were admitted, without objection. I received the completed transcript (Tr.) on January 23, 2019. I held the record open until January 17, 2019, to allow Applicant to submit additional documentation. He timely submitted AE D, which I admit without objection.

### **Findings of Fact**

Applicant is a 33-year-old senior consultant who has been employed by a defense contractor since August 2012. He requires a security clearance for this employment. He was previously granted an interim secret clearance in 2012, which was approved in 2014. Applicant is single and has no children. He earned a bachelor's degree in 2009. (Tr. 9-10, 16-17)

In February 2012, Applicant went to New Orleans for a vacation during Mardi Gras. Over the course of the day, he consumed several alcoholic drinks with his friends. Applicant continued to drink that night, he became intoxicated, but could not find a public restroom. While Applicant was urinating outdoors in a public area, a police officer approached him, and gave him a citation for lewd conduct. Applicant hired a local attorney to represent him in absentia at his court hearing, and the citation was dismissed. (GE 1 at 41; GE 2 at 13; GE 5 at 5; Tr. 17-20, 42-43)

Applicant disclosed the 2012 incident in his 2012 and 2016 SCAs, because he was advised to "include anything and everything." The incident above occurred shortly before he completed his first SCA; however, Applicant did not disclose the incident to his facility security officer (FSO) or program manager.<sup>1</sup> (GE 1 at 41; GE 2 at 13; Tr. 42-43)

In March 2013, Applicant had plans to attend a National Hockey League (NHL) game after work with a coworker, during the middle of the week. That morning when he went to work, he left his vehicle outside of a public transportation center in anticipation of his evening plans. Applicant consumed three beers at the game, he went to at least one bar after the game, and consumed two liquor drinks. (GE 1 at 42; GE 2 at 3, 13-14; Tr. 20-23, 44-45)

At the end of the night, Applicant took public transportation to his car and drove for approximately five to seven minutes. While he was driving, he felt intoxicated, and decided to pull his vehicle over to the side of the road and sleep. He slept for approximately an hour, when a police officer knocked on the window of Applicant's car and woke him up. Applicant was sitting in the driver's seat and the keys were in the ignition. Applicant failed the field sobriety tests. He was given a breathalyzer, and his blood alcohol content (BAC) was .13%. He was arrested and charged with driving/attempting to drive a vehicle while under the influence of alcohol (DUI). Applicant's license was suspended for a period prior to the court hearing. The arresting

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<sup>1</sup> During his October 2017 government interview, Applicant told the investigator that he had not told his parents or coworkers about the 2012 lewd conduct citation. (GE 2 at 13)

officer did not appear at Applicant's court hearing, and the charges were dismissed.<sup>2</sup> (GE 2 at 3, 13-14; GE 3; Tr. 20-23, 44-46)

Applicant testified that after the 2013 arrest, he did not seek counseling or treatment, but he changed his behavior for a period of time. He used ride shares and stopped drinking for a few months before his court hearing. After the charges were dismissed, he resumed the consumption of alcohol. (GE 2 at 14; Tr. 23-24)

In August 2017, Applicant went out for dinner on a work night with a friend and consumed a couple of drinks. After dinner they went to the friend's parents' house and he had approximately two more drinks. He testified that did not intend to drink alcohol, but consumed approximately four drinks in four to five hours, and he thought he was sober enough to drive. He left the house, drove five minutes, and then pulled over to rest. After sleeping for approximately 45 minutes, a police officer approached his vehicle and woke him. Applicant was sitting in the driver's seat with the keys in the ignition. Applicant failed the field sobriety tests, and his BAC results were .14%. He was arrested and charged with (DUI). The arresting officer did not come to his court hearing, and the charges were dismissed in December 2017. (GE 2 at 3, 14-15, 17; GE 4; Tr. 24-29, 48)

Applicant did not seek treatment or counseling after his third alcohol-related arrest. He testified that he was relieved that the charges were dropped, he reflected on the incident, stopped drinking for a few weeks, but did not believe that alcohol classes would have been "beneficial." Applicant resumed drinking after the 2017 DUI charges were dismissed in late 2017. (GE 2 at 6; Tr. 28-31, 33-34, 47, 49)

In his September 2018 Answer to the SOR, Applicant indicated he intended to seek an alcohol evaluation, and he was abstaining from the consumption of alcohol. On January 1, 2019, he paid for an alcohol and drug evaluation from a private facility. The assessment found that Applicant does not need treatment. (Answer; AE A; AE D)

Applicant testified that he continued to drink after the SOR was issued, and he last consumed alcohol a few weeks before the hearing. After each of the incidents alleged in the SOR, Applicant told government investigators that he intended to modify his consumption of alcohol. (Answer; GE 5 at 5; GE 2; AE A; AE C; AE D; Tr. 15, 32-33, 35-37)

Applicant's two DUI arrests occurred on work nights. He testified that on both occasions, he drove, in part, because it was a work night, and he wanted to get home to be responsible, sleep, and then go to work the next day. Following both arrests, Applicant was taken into custody, and his vehicle was towed. He was released early in the morning on both occasions and called into work as sick, and did not disclose the arrests to his FSO. In his notes that he prepared for the hearing, Applicant stated that he "wasn't really driving" before the 2013 and 2017 arrests. (AE C at 1; Tr. 21, 25; 62-63)

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<sup>2</sup> During his October 2017 government interview, Applicant told the investigator that he had not told his parents or coworkers about the 2013 arrest. (GE 2 at 14)

Throughout his six and half years of employment for his company, Applicant has attended yearly security clearance training. He was aware that he had a duty to report derogatory or adverse information to his employer. Applicant testified that he was unsure if he was required to report information prior to a final determination and if he was required to report the two DUI arrests despite the dismissal of the charges. There is no evidence that Applicant sought clarification on this issue. (AE C; Tr. 37-39)

Applicant did not report either of the DUI arrests to his FSO when the arrests occurred. He testified that the arrests were embarrassing, and he was worried about his job. Applicant did disclose the 2013 and 2017 arrests to the government investigator during his interview in October 2017. (GE 1 at 41-42; Tr. 39-41, 46-47, 50-56)

Applicant presented a reference letter from his program manager. She found him to be reliable and effective in his role at the company. (AE B; Tr. 15)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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(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**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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.

Applicant's admissions and the documentary evidence establish two disqualifying conditions under 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

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

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline. Three are potentially applicable:

(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 good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and

has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant had three alcohol-related incidents between February 2012 and August 2017. The last two incidents were arrests for DUI, and they occurred while he held a security clearance. All three of the arrests were dismissed, as a result Applicant did not face any legal consequences for his behavior. His multiple claims over the years that he changed his behavior and consumption of alcohol are unconvincing, due to the frequency and number of arrests. The passage of time since the 2017 alcohol incident is insufficient to mitigate the underlying concerns.

Applicant's argument that he was not really driving before the 2013 and 2017 arrests, demonstrate that he has not acknowledged the magnitude of his bad choices. His brief periods of abstinence in preparation for his court cases do not mitigate his behavior as well. Finally, due to the recency of Applicant's 2017 arrest, he has not yet established a pattern of responsible use of alcohol.

Prior to Applicant's hearing, he sought an alcohol assessment, which determined that no treatment was recommended. He did not seek counseling or treatment after either of the DUI arrests. AG ¶¶ 23(a), 23(b), and 23(d) do not apply.

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject

interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is potentially applicable in this case:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

In this case, Applicant claimed he was unaware that he had a duty to report his arrests to his FSO when they occurred, regardless of the final determination. Given Applicant's educational and professional background and his expressed concern about his employment due to the arrests, Applicant deliberately did not disclose his multiple alcohol-related incidents to his FSO.

AG ¶ 17 describes conditions that could raise a security concern and be mitigating. Two are potentially applicable in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant failed to disclose derogatory information regarding his alcohol-related incidents to his FSO. Applicant admitted that he was embarrassed by his behavior and concerned about his employment. Although, he disclosed his arrest to the government investigator, his failure to be forthright to his employer is concerning. There is no evidence that the government was aware of the 2013 arrest before Applicant's security clearance was granted in 2014.

Applicant made deliberate choices to keep his employer in the dark regarding his behavior, raising the concern that he is unreliable and untrustworthy and calling into question his judgment and willingness to comply with rules and regulations. This

concern has not been mitigated by the passage of time. Neither of the mitigating conditions apply in this case.

### **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 Guidelines G and E in my whole-person analysis. I also considered Applicant's favorable character evidence.

Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

### **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, Alcohol Consumption: | Against Applicant |
| Subparagraphs 1.a – 1.c:          | Against Applicant |
| Paragraph 2, Personal Conduct:    | Against Applicant |
| Subparagraph 2.a:                 | Against Applicant |



## **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge