



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



In the matter of: )  
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) ISCR Case: 18-01614  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Shirin Asgari, Attorney At Law, Griffith, Young & Lass

September 3, 2019

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On April 12, 2017, Applicant submitted a security clearance application (e-QIP). On October 4, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G, Alcohol Consumption, and Guideline 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 (AG) effective after June 8, 2017.

Applicant answered the SOR on December 18, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 30, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on May 2, 2019, and the hearing was convened as scheduled on June 4, 2019. The Government offered nine exhibits, referred to as Government Exhibits 1 through 9, which were admitted without objection. The Applicant offered ten exhibits referred to as Applicant Exhibits A through

J, which were admitted without objection. Applicant called two witnesses and testified on his own behalf. The record remained open until close of business on June 25, 2019 to allow Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit K, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 17, 2019.

### **Findings of Fact**

Applicant is 54 years old, and is married with three adult children. He has a high school diploma and 2 ½ years of college. He is employed by a defense contractor as a Software Engineer. He is seeking to retain a security clearance in connection with his employment.

#### **Guideline G – Alcohol Consumption** **Guideline J- Criminal Conduct**

The Government alleges that the Applicant has engaged in excessive alcohol consumption, which 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 began working for his current employer in 2015, but has been working on the same military base for the past thirty-four years. He states that he has held a security clearance for thirty-four years.

Applicant has a long history of alcohol abuse. On three separate occasions over the past thirty years, he has been arrested for Driving Under the Influence of Alcohol (DUI). Applicant does not believe he is an alcoholic, but does believe that he may have had a drinking problem when he was a young man in the 1980's. He explained that his excessive drinking has occurred only at social gatherings.

Applicant's most recent arrest for DUI, and DUI with a blood alcohol content of .08% or higher was in July 2016. (Government Exhibit 9.) His blood alcohol content at the time of arrest was about .15%. Applicant explained that he drove his assistant college baseball coach home after one of the games. When they arrived they discussed and reviewed game plays and write-ups that were presented to various baseball scouts. Applicant states that he had one Jack Daniels and coke drink. His friend then asked for a ride to his wife's friend's house where his wife was located, and when Applicant arrived he consumed another drink of alcohol. He then proceeded to drive himself home, and on the way was arrested. Applicant was given a field sobriety test that he failed, and was taken to county jail where he spent the night. Applicant pled no contest to the second count, and the first count was dismissed. He was ordered to

enroll in an alcohol program, complete 45 Alcoholics Anonymous (AA) meetings, and abstain from alcohol for 15 months. He was placed on three year probations that was to end in August 2019. Prior to this arrest, Applicant was arrested on two other occasions for DUI.

In January 2001, Applicant was arrested for DUI, and DUI with a BAC of .08% or higher. (Government Exhibit 8.) Applicant stated that on this occasion, he and his wife were invited to attend a Super Bowl Party. His wife fell ill and did not attend. Applicant attended the party without her, and left the party unexpectedly around halftime when an individual he did not like showed up that Applicant did not want to be around. On the way home there was a checkpoint, and Applicant was pulled over, and arrested for DUI. Applicant's blood alcohol level at the time of arrest was .20%. Applicant pled no contest to the DUI and was placed on three year probation, in addition to being fined \$1,429, ordered to pay victim restitution of \$100, enroll in and complete a six-month alcohol-awareness program, and ordered to abstain from drinking alcohol for two years with his driving privilege suspended for ninety days, serve ten days in jail with credit for one day on March 16, 2001. Applicant's probation did not terminate until about March 2004.

In May 1987, Applicant was arrested for Driving Under the Influence of Alcohol. (Government Exhibit 7.) He pled no contest and was placed on three year probation, fined, and ordered to attend an alcohol awareness program. Applicant does not remember the details of this arrest. (Tr. p. 61.)

Applicant is currently on probation for his 2016 DUI conviction that will terminate in August 2019. He states that he no longer consumes alcohol. He states that his last drink of alcohol was in the summer of 2016. He no longer has cravings for alcohol. He states that he has made the decision to completely live a sober lifestyle. He states that he has no intentions of ever using alcohol, not simply because it was a term of probation but because he genuinely wishes to take positive steps to improve himself as a person. He wants to look for some kind of psychological counseling that he thinks would be helpful to him. (Tr. pp. 58 -59.) He has continued to comply with all terms of his probation and has enrolled in the prescribed alcohol awareness program that he has attended for about a year. (Applicant's Exhibits D, G, and Tr. p. 64.)

Applicant states that he is now more involved with the community, still coaching baseball, and has found religion. He attends church regularly, and the power of prayer has helped him with his drinking. (Tr. p. 75.) He had previously stepped away from his religion and is now back on course. His brother helped get him back into it, and it has helped create a new outlook on life for Applicant. (Tr. p. 71.)

In December 2003, Applicant was issued his first SOR from the DoD. The matter was adjudicated, and Applicant's security clearance was subsequently revoked. Applicant was aware at that time that the DoD was concerned about his excessive drinking, and at that time Applicant had only been arrested on two occasions for DUI. (ISCR Case No. 03-11548.)

Applicant's immediate supervisor, as well as the Director, testified on behalf of the Applicant. Both gentlemen considered the Applicant to be an excellent employee and recommend his retention of his security clearance. (Tr. pp. 29-46.)

Performance evaluations of the Applicant for 2006 through 2007; 2008 through 2009; and 2016 are all favorable and reflect that he consistently exceeds expectations in most cases. (Applicant's Exhibits A, B and C.)

Eleven letters of recommendation from colleagues and friends of the Applicant attest to his integrity, honesty, credibility and good judgment. From those who have worked with him, Applicant is described as conscientious and security conscious. He is a hard worker who always maintains a can-do attitude, and is admired by many of his coworkers and considered to be a valuable asset to the mission. He is recommended for a security clearance. (Applicant's Exhibit I.)

A chemical dependency assessment of the Applicant from a licensed psychotherapist dated June 18, 2019, indicates a positive prognosis. The psychotherapist refers to a history of four DUI's, not three. It is not clear whether this was an error or is factual. The letter indicates that Applicant has a history of binge drinking with no cravings for alcohol in between episodes resulting in four DUI's. The psychotherapist further noted that, "quite commonly, this drinking pattern limits an individual's ability to identify the power alcohol exhibits over them. Despite this, Mr. Muro took his 2016 DUI seriously and stopped drinking immediately afterwards." Applicant's current sobriety plan and dedication to maintaining sobriety overall is very positive. (Applicant's Post-Hearing Exhibit K.)

## **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, 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. According to AG ¶¶ 2(a) and 2(c), 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 that “[a]ny 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

## **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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

(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

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

The evidence shows that Applicant incurred three arrests and charges for DUI. These incidents raise security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides 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 good 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 or 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.

Applicant failed to introduce sufficient evidence of rehabilitation. Although it has not been determined if he is an alcoholic or is alcohol dependent, he has had three alcohol-related incidents away from work, the most recent one occurred as recently as 2016. Even after receiving an SOR from DOHA in 2003, which ultimately resulted in the revocation of his security clearance, Applicant has continued to consume alcohol to excess at times and he continued to drink and drive. His conduct has been irresponsible and dangerous. Following each DUI arrest, he has tried to stop drinking. On each occasion, after a short period, he resumed his previous pattern of drinking. Given the extensive nature of his drinking and the fact that his time in sobriety is still fresh, Applicant has not demonstrated sufficient good judgment and reliability necessary to access classified information. ¶ 23 does not provide mitigation.

## **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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (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; and
- (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.

Appellant was arrested for drinking and driving on three occasions and was convicted each time. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (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.

As the years have passed, Appellant violated the law by continuing to drink and drive. His three arrests and convictions for DUI speak for themselves. Although Applicant now states that he will no longer consume alcohol, and has been sober for three years, given his arrest history, and the fact that the most DUI occurred as recently as 2016, there is no guarantee that Applicant will not soon return to his old ways. None of the mitigating conditions establish full mitigation.

### **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 and Guideline J in my whole-person analysis. Applicant continued to consume alcohol to excess even after being arrested on two separate occasions for DUI when his blood alcohol level was extremely high. As a result, he was arrested a third time which brings us to this hearing. At this time, the evidence is mixed, and there is no strong evidence in the record to show that he will remain sober for any sustained period. He has failed to present sufficient evidence of rehabilitation to overcome his heavy burden to mitigate his alcohol abuse. Overall, the record evidence raises doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the cited adjudicative guidelines.



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

Darlene Lokey Anderson  
Administrative Judge