



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



In the matter of: )  
)  
) ISCR Case No. 14-05801  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Tokay T. Hackett, Esq.

02/07/2019

---

**Decision**

---

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct and alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 20, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. Applicant responded to the SOR on May 24, 2018, and requested a hearing before an administrative judge. On August 22, 2018, Department Counsel amended the SOR to add an additional allegation under Guideline E and allegations under Guideline G, alcohol consumption. Applicant responded to the amended SOR on September 20, 2018.

The case was assigned to me on November 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2018, scheduling the hearing for January 23, 2019. The hearing was convened as scheduled. The Government called two witnesses and submitted Government Exhibits (GE) 1 through 14, which were admitted in evidence without objection. Applicant testified,

called two witnesses, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE E, which was admitted without objection.

### **Findings of Fact**

Applicant is a 58-year-old employee of a defense contractor. He has worked for his current employer since 2014. He served in the U.S. military from 1983 until he retired with an honorable discharge in 2003. He seeks to retain a security clearance, which he has held since he was in the military. He has a bachelor's degree, awarded in 2009, and a master's degree, awarded in 2011. He is married with three adult children and three adult stepchildren.<sup>1</sup>

Applicant has a history of driving and alcohol-related incidents, and problems in the workplace. The alcohol and driving incidents will be addressed first. He was arrested twice in about 1978 to 1979 for driving under the influence (DUI). He was about 18 or 19 years old at the time. When he was interviewed for a background investigation in 1987, he stated that he was fined more than \$100 for one of the DUIs, but he did not recall the amount of the other fine. At his hearing, he initially testified that he could not remember being arrested for DUI during that time period. He eventually conceded that he had been arrested as alleged, but he later again stated that he could not recall whether the incidents occurred. Applicant's testimony and statements about this and other incidents were evasive, inconsistent, and not credible.<sup>2</sup>

Applicant was arrested in May 1988 and charged with drunk driving and speeding by going 49 miles per hour (MPH) in a 35 MPH zone. He pleaded guilty to reckless driving, and the speeding offense was dismissed. He paid a \$200 fine, and his license was suspended for 30 days.<sup>3</sup>

Applicant wrote in his response to the SOR that he "stopped at a local bar that served alcohol, and [he] recall[ed] drinking one beer." He stated that the drunk driving charge was reduced and "would have been dismissed if it weren't for the speed." He admitted at his hearing that he may have had two or more beers. The military police report of the incident indicates that Applicant failed the field sobriety test and his blood alcohol content (BAC) was measured at 12% and 13%. He testified that the BAC may have been affected by his dentures.<sup>4</sup>

---

<sup>1</sup> Tr. at 73-74, 85-88; GE 1; AE D.

<sup>2</sup> Tr. at 103-107, 118-119; Applicant's response to SOR; GE 14. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

<sup>3</sup> Tr. at 110; Applicant's response to SOR; GE 12.

<sup>4</sup> Tr. at 111-113; Applicant's response to SOR; GE 12.

Applicant was charged with public swearing/intoxication in July 2007. He paid a \$71 fine, and the charge was subsequently dismissed. Applicant stated that the police were called after an argument with his wife.<sup>5</sup>

Applicant was arrested in June 2013 and charged with driving while intoxicated (DWI), first offense. He pleaded guilty to the reduced charge of reckless driving. He was sentenced to 60 days in jail, with all time suspended; probation for 12 months; a restricted driver's license; and a \$500 fine.<sup>6</sup>

Applicant stated that he had no more than three beers at a baseball game, and he did not think his driving would be impaired. He admitted that his BAC was .09% to .10%. When he was interviewed for his background investigation in March 2014, he stated that the 2013 arrest was an isolated incident and not part of a pattern of alcohol-related issues. He denied ever being charged with any other alcohol-related offenses.<sup>7</sup> He wrote in his response to the SOR:

During my court appearance the prosecution agreed to reduce the charge to reckless driving because this was my first and only offense in my entire driving history at the time which was considered as mitigating evidence. Therefore, I was officially charged with a lesser charge of reckless driving. I plead[ed] guilty and paid the applicable fine. I emphasize that this was my first offense, at that time, in my entire driving history.

Applicant testified that he did not intend to be dishonest, and that he said he had only one alcohol-related driving offense because he thought the investigation was limited to the previous seven years. He also stated that he thought that because the charges had been reduced to reckless driving, they did not count.<sup>8</sup>

Applicant was charged in 2014 with the misdemeanor offense of reckless driving: improper brakes. He was found guilty of the lesser offense of improper control/driving. Applicant stated that he was reaching for a pair of sunglasses when a car cut in front of him and abruptly stopped. He hit the back of the car. Alcohol was not involved.<sup>9</sup>

Applicant attended and completed alcohol counseling as a requirement of his probation for the 2013 offense. He stated that he has learned from the experience, he does not drink to excess, there have been no additional driving offenses, and there will be no additional alcohol-related incidents.<sup>10</sup>

---

<sup>5</sup> Tr. at 110-111; Applicant's response to SOR; GE 2, 13.

<sup>6</sup> Tr. at 111; Applicant's response to SOR; GE 1, 2, 4.

<sup>7</sup> Tr. at 111; Applicant's response to SOR; GE 2.

<sup>8</sup> Tr. at 107-109.

<sup>9</sup> Applicant's response to SOR.

<sup>10</sup> Tr. at 114-117, 119-120; GE 2.

Applicant was terminated from a job in 2007 after his employer discovered multiple pornographic files on his network drive. Applicant stated that he was leaving the company, and he brought in a compact disc (CD) from home to copy some personal files from his work computer. He mistakenly picked up a CD that had pornography on it. He stated that he did not intentionally place the files on the network drive, and that they were accidentally uploaded to the drive while he was copying other files. He stated that he was terminated the next day, "on the same day that [he] had planned to resign."<sup>11</sup>

Applicant provided a similar, but slightly different, account of the termination during a January 2009 background interview. He stated that he accidentally copied the pornographic material onto his work computer from a memory stick. He was fired about two weeks later, and he did not mention that he had already planned to resign.<sup>12</sup>

Applicant worked for a defense contractor from about March 2013 until his contact was terminated as the result of a layoff in October 2013. In April 2013, he violated policy when he downloaded a file from his personal e-mail account, which contained multiple usernames and passwords for DOD accounts and other personal account information. He received a written reprimand in which he was directed to take additional training, with a warning that if his "future activities result in additional security incidents, disciplinary action, such as a formal performance action plan or involuntary separation, may follow." Applicant admitted that he had an Excel spreadsheet with "nonworking" old passwords that he used to keep track of old passwords, so that he would not use them again.<sup>13</sup>

In about September 2013, Applicant plugged his personal phone into his work computer to charge the phone. He immediately removed it when he was told that he had violated security rules.<sup>14</sup>

Applicant was at a work meeting in about October 2013 when he commented to the person next to him to the effect that if he brought his firearm, he could take out the entire leadership or a bomb could do the same. Applicant denied making a threat. He meant the comment to be a precaution about the lack of security in the facility.<sup>15</sup>

Applicant is highly regarded, as reported by two witnesses and various documents. He is praised for his excellent job performance, work ethic, trustworthiness, professionalism, and integrity.<sup>16</sup>

---

<sup>11</sup> Tr. at 88-91; Applicant's response to SOR; GE 1, 3, 11, 14.

<sup>12</sup> GE 14.

<sup>13</sup> Tr. at 20-21, 28-29, 74, 77-79, 91-93; Applicant's response to SOR; GE 1, 2, 5, 10; AE E.

<sup>14</sup> Tr. at 93-94; Applicant's response to SOR; GE 2.

<sup>15</sup> Tr. at 43-45, 79-82, 96-99; Applicant's response to SOR.

<sup>16</sup> Tr. at 59-71; AE B, C.

## 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

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 several conditions that could raise security concerns under AG ¶ 22. The following is potentially applicable 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.

Applicant was arrested on four occasions for DUI, drunk driving, or DWI. He was charged with public swearing/intoxication in 2007. AG ¶ 22(a) is applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following 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 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; 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's most recent alcohol-related offense was in 2013. He attended and completed alcohol counseling as a requirement of his probation. He stated that he has learned from the experience, he does not currently drink to excess, and there will be no additional alcohol-related incidents. However, Applicant's testimony about his arrests was inconsistent, contradictory, and not worthy of belief. Without candor, I am unable to conclude that the conduct is unlikely to recur.

I find that Applicant's conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) is not applicable. AG ¶¶ 23(b) and 23(d) have some applicability, but they are insufficient to overcome concerns about his alcohol-related criminal conduct.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's alcohol-related criminal conduct is cross-alleged under Guideline E. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the alcohol consumption and criminal conduct guidelines. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established for the alcohol-related conduct.

SOR ¶ 1.b alleges the 2013 DWI. SOR ¶ 1.g alleges all of the alcohol-related conduct, including the 2013 DWI. There is no conduct in SOR ¶ 1.b that is not also alleged in SOR ¶ 1.g. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.b is concluded for Applicant.

Applicant violated policy and security rules and procedures in 2007 by having pornographic files on his network drive; in 2013, when he downloaded a file from his personal e-mail account, which contained multiple usernames and passwords for DOD accounts and other personal account information; and again in 2013, when he plugged his personal phone into his work computer. He was charged in 2014 with the misdemeanor offense of reckless driving: improper brakes. He was found guilty of the lesser offense of improper control/driving. AG ¶ 16(e) is applicable. AG ¶¶ 16(c) and 16(d) are not perfectly applicable because the conduct is sufficient for an adverse determination under other guidelines. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15, 16(c), and 16(d) are established.

SOR ¶ 1.e alleges that Applicant was removed from his position in October 2013 prior to his scheduled end date on the contract after he made threatening comments toward the leadership. That allegation is not established by substantial evidence. SOR ¶ 1.e is concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Any one or more of the allegations could be mitigated if they were considered on their own in a piecemeal basis. However, the number of allegations, combined with Applicant's lack of candor, preclude mitigation. Concerns about his reliability, trustworthiness, and good judgment remain. Personal conduct security concerns are not mitigated.

### **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 E and G in my whole-person analysis. I also considered Applicant's honorable military service and his excellent character evidence. However, he has multiple alcohol-related driving offenses and work problems, and he cannot be trusted to tell the truth.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct and 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 E:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Paragraph 2, Guideline G:	Against Applicant
Subparagraphs 2.a-2.d:	Against Applicant

## Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Edward W. Loughran  
Administrative Judge