

KEYWORD: Alcohol

DIGEST: Applicant had a history of alcohol abuse. She did not have any alcohol-related incidents involving civil authorities. She self-referred for alcohol counseling and treatment. She received outpatient alcohol treatment. Following a relapse, she immediately self-referred for treatment. She regularly attends Alcoholics Anonymous meetings and does not consume any alcohol. She is committed to a life of sobriety and has demonstrated a lifestyle change consistent with that commitment. Her alcohol consumption security concerns are mitigated. Clearance is granted.

CASENO: 05-10400.h1

DATE: 09/14/2007

DATE: September 14, 2007

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In Re:	)	
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-----	)	ISCR Case No. 05-10400
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant had a history of alcohol abuse. She did not have any alcohol-related incidents involving civil authorities. She self-referred for alcohol counseling and treatment. She received outpatient alcohol treatment. Following a relapse, she immediately self-referred for treatment. She regularly attends Alcoholics Anonymous meetings and does not consume any alcohol. She is committed to a life of sobriety and has demonstrated a lifestyle change consistent with that commitment. Her alcohol consumption security concerns are mitigated. Clearance is granted.

### **STATEMENT OF THE CASE**

On March 8, 2004, Applicant submitted a Security Clearance Application (SF 86).<sup>1</sup> On February 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, Safeguarding Classified Information Within Industry, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup>

The SOR alleges security concerns under Guideline G (Alcohol Consumption). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an answer notarized on April 6, 2007, and received at DOHA on April 10, 2007, Applicant responded to the SOR allegations, and elected to have her case decided at a hearing. On April 30, 2007, the case was assigned to me. On May 21, 2007, DOHA issued a notice of hearing scheduling the case for June 27, 2007. On July 10, 2007, DOHA received the transcript (Tr.).

### **FINDINGS OF FACT**

As to the concerns identified under Guideline G, Applicant admitted with explanation the SOR allegations. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

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<sup>1</sup>Government Exhibit (GE) 1 (Standard Form (SF) 86, Security Clearance Application) is dated and signed March 8, 2004.

<sup>2</sup>On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, in which the SOR was issued on or after September 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

Applicant is 55 years old.<sup>3</sup> She received a bachelor of science degree in organization management in June 1995. Tr. 140-141. She also received a master's degree in January 2002 in organizational management. Tr. 141. She has no military service. Applicant has been employed by a government contractor since January 2004, and her current job title is quality assurance manager. Tr. 142. She is unmarried, and does not have any children. Applicant was married from September 1980 to April 2000. That marriage ended by divorce. Applicant is a first-time applicant for a security clearance.

Throughout her hearing, I found Applicant to be credible and forthright. She confirmed her previous admissions and provided substantial information about her history with alcohol and her life as an alcoholic and what she has done overcome her disease. In the late 1980s, Applicant experienced several emotional setbacks that triggered an impulse or a need to self-medicate and use alcohol to excess. Her drinking became exacerbated following the pending breakup of her marriage when she and her husband separated in June 1996; loss of family members to include her stepfather in September 1987, her father-in-law in December 1987, her grandmother in July 1988, and her mother in July 1989; relocating to live near her husband's large family in December 1990, which resulted in friction with her husband; losing her home in 1998; and being laid off from her job.

The loss of her home, being laid off, and her final divorce decree all occurred with a one-week period. She self-referred to Alcoholics Anonymous (AA) when she realized her drinking was getting out of hand. She attended two outpatient alcohol treatment programs in 1999. The first was from January 1998 to May 1999 and the second was from June 1999 to July 1999. In both programs, she was diagnosed as alcohol dependent. All of her alcohol-related treatment was as the result of self-referral.

From August 1999 to September 1999, she attended counseling with a licensed clinical social worker for alcohol dependence and depression. From October 1999 to June 2004, she attended counseling on an occasional basis with a licensed social worker for alcohol abuse. In conjunction with her response to DOHA interrogatories, she provided a letter from a psychologist, who is also a licensed independent clinical social worker. The letter stated among other things that Applicant "plans to continue working with her AA sponsor and to attend AA meetings regularly, approximately one a week." She described Applicant's prognosis as "good, contingent upon continued treatment. She recommended Applicant for a security clearance and "[did] not believe her past behavior would cast doubt on her reliability, trustworthiness, good professional judgment, or ability to safeguard classified national security information or material." GE 4.

She admits to having a relapse in August 2006 where she drank a six pack of beer over a two-day period and to drinking two beers on December 25, 2006. She denied seeing a medical doctor for diagnosed condition as alleged in ¶ 1.e. She denied continuing to consume alcohol as alleged in ¶ 1.f, but rather to drinking two

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<sup>3</sup>GE 1, *supra* n. 1, is the basis for the facts in this paragraph, unless otherwise stated.

beers on Christmas Day. She denied as of August 2006 to drinking alcohol once every six months, but rather to drinking one six pack of beer in August 2006 over a two-day period. The government did not rebut her assertions.

She has three AA sponsors, and maintains contact with them. One lives out of state and the other two live near her. Her AA attendance is current, and she has not consumed alcohol since December 2006. Her current treatment program consists of attending AA meeting and maintaining contact with her sponsors, and lists her prognosis as good.

Applicant submitted numerous reference letters that confirm she is a solid employee, is professionally accomplished, has a superb reputation, maintains a strong and very engaged support group, is a homeowner and has outside interests. GE 4, AE A through JJ. Numerous individuals stated Applicant is trustworthy and recommended her for a security clearance. None of these documents contained any derogatory information. Applicant is determined never to use alcohol again. She is reliable and trustworthy and is highly motivated to remain sober.

## POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines), which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these Guidelines in conjunction with the factors listed in the adjudicative process. Guidelines ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guidelines ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guidelines ¶ 2(a): "(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) 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."

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” Guidelines ¶ 2(b). 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.

In the decision-making process, facts must be established by “substantial evidence.”<sup>4</sup> The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>5</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an 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.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

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<sup>4</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>5</sup> “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

### **Guideline G (Alcohol Consumption)**

Guidelines ¶ 21 articulates the Government's concern concerning alcohol consumption, "[e]xcessive 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."

Three Alcohol Consumption disqualifying conditions could raise a trustworthiness concern and may be disqualifying in this case. Guidelines ¶¶ 22(c), 22(e) and 22(f) provide:

- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant did not have any "alcohol-related incidents away from work" or at work. Applicant was not diagnosed as alcohol dependent by a duly qualified medical professional as defined by the Directive. No court orders were issued. Guidelines ¶¶ 22(a), 22(b), 22(d), and 22(g) do not apply.

Applicant was straightforward in her responses and accepted responsibility for her actions. She was diagnosed as alcohol dependent at two separate alcohol treatment centers in 1999. She admitted to binge drinking during her hearing and although she had lengthy periods of sobriety, she had several relapses, most recently in December 2006. After her relapses, she always self-referred for help. The Government produced substantial evidence of these three disqualifying conditions, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.<sup>6</sup>

Four Alcohol Consumption Mitigating Conditions under Guidelines ¶¶ 23(a)-(d) 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;

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<sup>6</sup>See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

- (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);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;
- (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.

Guidelines ¶ 20(a) does not define the sufficiency of the passage of time, and there is no “bright-line” definition of what constitutes “recent” conduct. Based on my evaluation of the record evidence as a whole,<sup>7</sup> and because Applicant routinely, on multiple occasions consumed excessive amounts of alcohol within two years of his hearing, I conclude Guidelines ¶ 20(a) with regard to the passage of time does not apply. She does receive partial credit under this Guideline after her binge drinking when confronted with the loss of a family member, loss of her job, and having her divorce become final all within the same week. Guidelines ¶ 20(c) does not apply because Applicant had a relapse.

However, she meets all requirements of Guidelines ¶¶ 20(b) and 20(d) because she has acknowledged her alcoholism, has changed her life, has abstained from alcohol use since December 2006, has successfully completed inpatient and outpatient treatment, has attended hundreds of Alcoholics Anonymous meetings, and received a favorable prognosis from her psychologist. Applicant presented a strong case for concluding that alcohol consumption problems are “unlikely to recur.”<sup>8</sup>

### **“Whole Person” Analysis**

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under Guidelines ¶ 2(a). As noted above, Applicant’s alcohol consumption was of sufficient frequency, volume and duration to constitute a security concern.

The Government produced substantial evidence of three disqualifying conditions. Applicant’s history of alcohol consumption is a serious, ongoing, long-term problem. Her alcohol-abuse relapse after out-patient alcohol therapy is

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<sup>7</sup>See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis all debts are considered as a whole.

<sup>8</sup>These two mitigating conditions receive additional support in the whole person analysis portion of this decision, *infra*.

sufficiently serious to raise a security concern. Her alcohol consumption was knowledgeable and voluntary. She is 55 years old, sufficiently mature to be fully responsible for his conduct. The motivation to consume alcohol was connected to depression and stress relief. Excessive alcohol consumption in this manner is not prudent or responsible, and as such, the potential for exploitation is raised.

Applicant has presented substantial extenuating and mitigating evidence. She successfully completed out-patient alcohol treatment in 1999. She attended hundreds of Alcoholic Anonymous meetings and had numerous sessions with clinical psychologists, who had decades of experience treating alcoholism. A psychologist provided a prognosis supporting sobriety and rehabilitation. She received extensive alcohol counseling and has religious and AA support. The absence of evidence of any prior violation of her employer's rules or requirements, her forthright and candid statement at her hearing, her solid performance as an employee and his evident sincerity about making future progress all weigh in her favor.

There was no evidence of any alcohol-related violations of the law, or impairment at work. She provided compelling oral and written statements from friends and co-workers supportive of rehabilitation. In sum, the likelihood of recurrence is low because sufficient evidence was presented about improvement in her overall psychological and emotional situation, her solid track of sobriety, and alcohol counseling.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the security concerns pertaining to alcohol consumption.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>9</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has successfully mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible 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, Guideline G:      FOR APPLICANT  
Subparagraphs 1.a to 1.g:    For Applicant

### **DECISION**

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<sup>9</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).



In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is granted.

Robert J. Tuider  
Administrative Judge