



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



In the matter of:	)	
	)	
	)	ISCR Case No. 06-01495
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: Pro Se

April 28, 2008

**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 14, 1999. (Item 4) In September 2003, his employer filed an adverse information report based on arrests for driving while intoxicated. (Item 5) On September 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for alcohol consumption and personal conduct under Guidelines G and E. (Item 1) 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 23, 2007. (Item 3) Applicant admitted all factual allegations, and elected to have the matter decided on the written record in lieu of a hearing. Department counsel submitted the Government's written

case on December 12, 2007. Applicant received a complete file of relevant material (FORM) on January 7, 2008, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not submit additional information. The case was assigned to me on April 7, 2008. Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Procedural Issues**

Applicant admitted all factual allegations under both guidelines G and E. The allegation under Guideline E pertains to Applicant's consumption of alcohol at work. Paragraph 16 of the new adjudicative guidelines sets out the security concerns for Personal Conduct. Under ¶ 16(c), a disqualifying condition may arise where there is "credible adverse information in several adjudicative issue areas *that is not sufficient for an adverse determination under any other single guideline . . .*" Paragraph 16(d) applies where there is credible adverse information "*that is not sufficient to support action under another guideline . . .*" In this case, the information is sufficient to raise a security concern for alcohol consumption under guideline G and is fully supported under guideline G. The new adjudicative guidelines make allegations of personal conduct based solely on alcohol consumption, improper for security consideration. Since none of the information raises separate security concerns under personal conduct, that security concern need not be discussed further in this decision. Accordingly, the allegation and security concern under guideline E will not be further discussed in this decision.

### **Findings of Fact**

Applicant is 52 years old and employed as a woodwright for a defense contractor for over 8 years. He is divorced but has two children from his marriage.

Applicant admitted that he was arrested for underage drinking and driving while intoxicated in 1975. He admitted he was arrested in 1994 for driving while intoxicated, driving with a blood alcohol level above .10, and failure to provide proof of insurance. He pled guilty to driving while intoxicated, and the other charges were dismissed. He was sentenced to 12 months unsupervised probation, a fine of \$444.50, to attend alcohol counseling, and to speak at Mothers Against Drunk Driving (MADD) events. (Item 8) Applicant admitted he was arrested and found guilty of driving under the influence of alcohol in November 2002. He was sentenced to a fine of \$475, unsupervised probation, to attend alcohol evaluation, education, and treatment, 10 days in jail, and to speak at MADD Victim Impact Panels. He admitted he was arrested for driving under the influence of alcohol and other traffic offenses in September 2003. He pled guilty to driving under the influence of alcohol and was fined \$475, sentenced to serve 15 days in jail, 12 months unsupervised probation, to attend alcohol evaluation, education, and treatment, and to speak at MADD Victim Impact Panels. (Item 7)

Applicant admits he has consumed alcohol, usually beer, his entire adult life, at times to excess. His present consumption of alcohol is at least two beers a day, usually at home or on his way home. He admitted in an August 2004 statement, that for the eight days before the statement he consumed about 25 beers. He admits that in 2002, his daily consumption of beer was about ten a day. Alcohol use was an issue causing his divorce. His children have commented to him about his drinking and urged him to stop. He has not attempted to stop drinking alcohol and still admits to drinking alcohol daily, but he has moderated his consumption of alcohol. (Item 7) He has been diagnosed by a licensed clinical social worker as alcohol dependent and a problem drinker. (Item 9)

Applicant admits that in 1994, he left his position with another company after he fell asleep on the job. The company claimed he was drinking alcohol on the job. Applicant stated he ate some bad turkey which caused him to fall asleep. (Item 7 at 4-5)

Applicant states he drinks alcohol to relax after a hard day of work. He is never violent and his alcohol consumption has not resulted in financial hardship. He makes enough money to pay his debts and his taxes. He has not attempted to stop drinking but has cut back for fear of going to jail. (Item 7 at 4)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 access to classified information will be resolved in favor of 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, 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. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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**

### **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 ¶ 21)

Applicant’s arrests for minor in possession of alcohol, and driving while intoxicated, as well as drinking alcohol to excess, consuming over ten beers per day, and his family’s concerns about his alcohol consumption raise Alcohol Consumption Disqualifying Conditions (AC DC) ¶ 22(a) (alcohol-related incidents away from work, such as driving 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 AC DC ¶ 22(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). The driving while intoxicated incidents are alcohol-related incidents away from work. His consumption of more than ten beers a day and his family’s concerns are indications of binge or habitual consumption of alcohol. Applicant leaving his employment by mutual agreement because he fell asleep on the job and the employer’s allegation he was drinking on the job raises AC DC ¶ 22(c) (alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent). The diagnoses of alcohol dependence and problem drinking by a licensed clinical social worker raises (AC DC) ¶ 22(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).

Security concerns for excess alcohol consumption can be mitigated by consideration of Alcohol Consumption Mitigating Conditions (AC MC) ¶ 23(a) (so much

times 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). Applicant's most recent driving under the influence of alcohol incident was in 2003. He was diagnosed as alcohol dependent and a problem drinker in 2004. He admits to the continued daily consumption of alcohol. He has a history of alcohol abuse. His last alcohol-related incident was in 2003. There are at least five alcohol-related incidents which show that his alcohol related behavior is not infrequent. Because of his continued consumption of alcohol and no indications of any attempts to stop consumption, the alcohol-related incidents are likely to occur.

Applicant does not acknowledge he has alcohol-related problems even though the issue was raised by his family. He has taken no action to overcome his alcohol problems but merely states that he cut down his consumption. He still continues to consume at least two beers a day. AC MC ¶ 23(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 (of an alcohol abuser) does not apply).

Applicant has not participated in or sought alcohol counseling, even though he participated in some alcohol education programs after two of his driving while intoxicated convictions. He has not received a favorable prognosis concerning his alcohol consumption. He has not participated in any alcohol rehabilitation or treatment programs. AC DC 22(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), and AC DC 22(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) do not apply. I find that Applicant has not mitigated security concerns for alcohol consumption.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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.” Under AG ¶ 2(c), the

ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I have considered all of the evidence and the “whole person” in evaluating Applicant’s security worthiness. I considered that Applicant had alcohol-related incidents for many years and continues to drink alcohol. He has not participated in any alcohol counseling, even though he did participate in some alcohol education programs after two of his driving while intoxicated events. He has not admitted he has an alcohol problem even though his family has concerns about his alcohol consumption. Applicant has not presented sufficient information to show that his consumption of alcohol is not a security concern. I conclude he is not 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:	AGAINST APPLICANT
Subparagraphs 1.a. to 1.k:	Against Applicant
Paragraph 2, Guideline E:	DISMISSED
Subparagraph 2.a.:	Dismissed

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant a security clearance for Applicant. Clearance is denied.

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Thomas M. Crean  
Administrative Judge