



In the matter of: )  
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 ) ISCR Case No. 06-16005  
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 Applicant for Security Clearance )

For Government: Braden M. Murphy, Esquire, Department Counsel  
 For Applicant: James W. Green, Esquire

April 30, 2008

**Decision**

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DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On December 8, 2004, Applicant submitted his Security Clearance Application (SF 86). On December 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G (Alcohol Consumption), to Applicant. 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 January 9, 2008, and requested a hearing before an administrative judge. On February 14, 2008, DOHA assigned the

case to me. A Notice of Hearing issued on February 29, 2008, and the case was heard on March 19, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 8 into evidence without objection. Applicant testified, called four witnesses, and offered Exhibits (AE) A through G and K into evidence without objection. The record remained open until April 4, 2008, to give Applicant time to submit documentary evidence. DOHA received the hearing transcript on March 28, 2008. On April 4, 2008, Applicant submitted additional evidence to which Department Counsel objected. Ruling on said objection is issued below.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend the SOR**

On or about March 5, 2008, Department Counsel filed a Motion to Amend the SOR and cross-allege the allegations, contained in subparagraphs 1.b and 1.d of the SOR, under Guideline J, Criminal Conduct, and to delete subparagraph 1.f under Guideline G, and incorporate it under Guideline J as subparagraph 1.c. On March 17, 2008, Applicant objected to the Motion.

After reviewing the pleadings and hearing arguments at the commencement of the hearing, I granted the Government's Motion and gave Applicant some time after the conclusion of the hearing to submit additional information in response to the Motion. (Tr. 10).

The Amended SOR adds Paragraph 2, Guideline J (Criminal Conduct) and recites the following allegations:

¶ 2.a. That information in Subparagraph 1.b, above.

¶ 2.b. That information in Subparagraph 1.d, above.

¶ 2.c. You were arrested on or about May 9, 2005, in Huber Heights, Ohio, and charged with Child Endangering. The charge was subsequently reduced to Attempted Child Endangering, and on or about September 22, 2005, you pleaded guilty and were ordered to pay fine/court costs of approximately \$66.00.

Subparagraph 1.f is deleted from Paragraph 1, Guideline G, and is incorporated under Guideline J.

### **Objection to Admission of Applicant's Supplemental Documentary Evidence,**

On April 1, 2008, Applicant submitted an Addendum to Response for SOR, and two attachments that I marked AE L, M and N, respectively. Department Counsel objected to the admission of AE M and N as irrelevant and not subject to cross-

examination. The Government's objections are noted. Said documents are admitted as having some relevance, the weight of which will be determined.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.g of the SOR. In his Addendum to Response to SOR, Applicant admitted the allegations cross-alleged in the Amended SOR. Both his Answer to the original SOR and to the Amended SOR offered explanations in support of his request for eligibility for a security clearance. (Answer; AE L). His admissions are incorporated into the following findings:

Applicant is 47 years old. He enlisted in the U.S. Air Force in August 1983. At the time of his honorable discharge in July 1987, he was a Sergeant/Senior Airman (E4). He held a Top Secret Clearance while in the Air Force. In October 1987, he began working as a system administrator and security manager for his current employer, a federal contractor. (Tr. 99). Presently, he is a software engineer. After leaving the Air Force, his Top Secret clearance was administratively downgraded to a Secret clearance, which he currently holds. During the 25 years that he has held a security clearance, he has worked with classified information and never been disciplined for any adverse incident involving it. (Tr. 101). He is married and has two children, ages 18 and 20. In August 2004, he earned a Bachelor of Science degree in Computer Sciences. (GE 1; 2).

Applicant began consuming alcohol at the age of 16 while in high school. (Tr. 105). During a Substance Abuse Assessment in January 2008, he told the evaluator that in the mid-eighties, he drank 5-6 beers on a daily basis. (AE J at 2). After leaving the Air Force, he became a "happy hour drinker." (Tr. 107). He "would stop off after work for two to three, occasionally four nights a week and have three to four beers, 5:30 to 7:00" before driving home. (*Id.*). He engaged in this pattern of drinking until December of 2007. (*Id.*). He never drank more than five beers because he knew that his blood alcohol level would go above .08, the legal threshold or point at which he was intoxicated and should not drive. (Tr. 156). In January 2008, he decided to stop consuming alcohol after receiving the SOR. (Tr. 130; 160).

Applicant has three incidents of criminal conduct in his background. In February 1996, Applicant was arrested and charged with Driving Under the Influence of Alcohol, after leaving work and celebrating with some colleagues the awarding of a new contract. (Tr. 108). He refused a Breathalyzer test at the time of the arrest and later pleaded guilty to a reduced charge of Reckless Operation, a misdemeanor. The court ordered him to pay \$125 in fines and to attend an alcohol program in lieu of serving three days in jail. He completed the two-day treatment program as required. No follow-up counseling was recommended to him. (Tr. 168).

In July 2002, Applicant and his wife became embroiled in a heated argument with their son regarding his performance in summer school. The son had previously been

arrested and charged with arson, resulting in the failure of some semester classes and necessitating his attendance at summer school. At a certain point, the altercation became physical, and Applicant backhanded his son, striking his face. (Tr. 113). Someone in the neighborhood called the police, who arrived shortly thereafter.

Applicant was arrested and charged with Domestic Violence that was later reduced to Attempted Assault, a misdemeanor. Applicant pleaded guilty and was sentenced to 90 days in jail, with 89 days suspended. The court fined him \$185, placed him on probation for one year, ordered him to undergo an alcohol assessment, and attend an anger management course. (Tr. 116). He underwent the assessment, attended the course, and sought counseling over the next three to four months. (Tr. 117). At the conclusion of the assessment, the evaluator indicated that he would recommend Applicant attend Alcoholics Anonymous (AA) meetings and participate in outpatient counseling. However, that recommendation was never formalized in the probationary reports and Applicant did not follow up with either suggestion. (Tr. 118; 168; Answer). Applicant admits that he had consumed beer prior to striking his son, but does not believe it was a contributing factor to the incident. (Tr. 116; 153). He is very remorseful and acknowledges losing his temper. (Tr. 115; AE L). That was the first and last time he ever struck his son. (Tr. 115).

In May 2005, Applicant was arrested and charged with Child Endangering after an incident involving his high school age daughter. Upon learning that his daughter, who had been convicted of shoplifting, was regularly skipping school and leaving home at night without permission, he struck her several times with a belt. A few days later, his daughter left school and was picked up by the police as truant. She told the police that her father had abused her, after which, she was sent to live with her grandmother. Subsequently, he pleaded guilty to a reduced charge of Attempted Child Endangering. He was fined \$66.00 and his daughter was returned home. (Tr. 127; GE 8). All charges filed against his wife were dropped. (Tr. 126). He greatly regrets the situation. (Tr. 145). He had not been drinking when he struck her. (Tr. 122).

In January 2008, Applicant made an appointment with a professional clinical counselor, who is also a licensed independent chemical dependency counselor with the Employee Assistance Program (EAP) at work, for a substance abuse assessment. (Tr. 131). According to the counselor's final evaluation report, Applicant was consuming three to four beers on a daily basis until January 13, 2008, and admitted that at certain social gatherings, he could consume up to 12 beers over many hours. Based on his evaluation, the counselor diagnosed him as having a "History of Alcohol Abuse – occasional, with recent early remission." (AE J). He recommended Applicant remain abstinent, "continue social support system involvement and continued outpatient psychotherapy with frequency of office visits to be reduced to one time per month in the near future." (*Id.*). The counselor noted a favorable prognosis, as a consequence of Applicant's recent participation in treatment. (AE I and J).

Although Applicant underwent alcohol assessments in 1996 and 2002, he was not diagnosed as having an alcohol dependence or abuse disorder. (Tr. 169). The first

time he received a diagnosis of alcoholism was from the EAP counselor in January 2008. (AE J).

In March 2008, Applicant sought another voluntary substance abuse assessment from a clinical psychologist. The psychologist interviewed Applicant for three hours, reviewed various documents, and administered four psychological tests. Based on the information that he gathered, the psychologist opined that he believes that Applicant “possesses a low risk for alcohol abuse” or “relapse behaviors.” (AE H). Although he did not specify in his report a designated medical code for the diagnosis of alcohol abuse or dependence, he referred to Applicant’s “potential future recovery from alcoholic addiction.” (AE J at 9). He noted “Denial tends to be a significant problem for most alcoholics and [Applicant] appears to recognize his condition, be taking proactive steps to address it adequately, and to accept responsibility for his actions. These bode well, clinically speaking, for future potential long-term recovery.” (*Id.*).

While testifying, Applicant stated he is “not an alcoholic.” (Tr. 144). He abuses alcohol and knows that it has caused many problems in his life. (Tr. 172-173). He stated that until recently “I never considered myself as a problem drinker, but I think that I may have been in some state of denial about that.” (Tr. 132). He realizes that he “can never drink again.” (Tr. 176).

Applicant never went to work after consuming alcohol. (Tr. 130). He has not been arrested or involved in any criminal conduct since May 2005. (Tr. 154). In mid-January 2008, he began attending weekly AA meetings, working with a sponsor, and participating in a 12-Step program at church. (Tr. 162). His family’s dynamics have improved and his relationships with his children are much better.

Applicant’s current program manager, who supervises Applicant’s direct supervisor, testified. He has a Secret security clearance. He has known Applicant since 1988 and interacts with him about three times a week. He has never observed any behavior by Applicant that would give him concern about Applicant’s loyalty or judgment. (Tr. 24-32).

One of Applicant’s previous co-workers testified. They worked together about 16 years, before the co-worker retired. He held a Top Secret clearance for a period of years, and then a Secret clearance. Since retiring six years ago, the co-worker has maintained a friendship with Applicant. He is aware of the alcohol security concerns regarding Applicant’s clearance. Over the course of the years that he has known Applicant, he has never found any reason to be concerned about Applicant’s consumption of alcohol. (Tr. 45-59).

One of Applicant’s friends testified. He has known Applicant for more than 20 years. He is aware that Applicant’s consumption of alcohol has raised issues pertaining to his security clearance. Although he has observed Applicant consuming beer at social events over the years, he does not recall seeing him inebriated. While watching sports events together on many occasions, he believes Applicant drank six to eight beers over

the course of the evening, including during a game in the fall of 2007. Applicant normally drank three or four beers during golf games. He has not seen Applicant drink any alcohol since January 2008 and is aware of Applicant's decision to stop drinking. He considers Applicant to be a good father, husband and friend. (Tr. 33-44).

Applicant's wife testified. They have been married 27 years and have two children. Their daughter is a senior in high school and their son works at an automobile shop, while attending college part-time. She has observed her husband consuming alcohol over the years, but does not believe he has an alcohol problem. He normally drank with his friends while watching football games at their houses. She is aware of the criminal incidents in his history, and does not think he would "drink and drive." (Tr. 66). She was present when he was arrested for assaulting their son and was involved in the altercation. She does not believe her husband was drinking at the time. She was arrested, along with Applicant, after the incident involving their daughter. She believes that her husband is committed to abstinence, recovery and church. (Tr. 60-96).

Five of Applicant's colleagues submitted letters in support of Applicant, attesting to his reliability, integrity and trustworthiness. Several of them have known him for many years. (AE A, B, C, and D). A senior manager at a competitor's company, who has known Applicant for more than 17 years, highly recommends that Applicant be permitted to maintain his security clearance. (AE F). Applicant's Pastor also wrote a letter of recommendation for him. He verified Applicant's participation in the church's recovery program and suggested that he participate in the program for at least two years. (AE K).

## **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 to obtain a favorable security decision. Section 7 of Executive Order 10865 provides that 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.”

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**

### **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.”

The guideline notes several conditions that could raise security concerns under AG ¶ 22. Three are 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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuse or alcohol dependent; and
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

Applicant has two alcohol-related criminal misdemeanors in his history. In 1996, he was arrested for driving while intoxicated, and in 2002, he was arrested for striking his son during which time he had been drinking. The Government raised a concern under AG ¶ 22(a). Applicant admitted that since he began consuming alcohol, there have been periods of time, up to the fall of 2007, when he drank to excess and to the point of intoxication. That evidence is sufficient to raise the disqualification under AG ¶ 22(c). In March 2008, Applicant was diagnosed by a clinical psychologist, as having an alcohol related disorder. That diagnosis triggers the application of AG ¶ 22(d).<sup>1</sup>

After the Government produced substantial evidence of that disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation. Conditions that could mitigate Alcohol Consumption are provided under AG ¶ 23:

(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);

(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,

(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.

¶ 23(a) does not provide mitigation because Applicant's excessive consumption of alcohol has been ongoing from the mid-eighties until late 2007. His pattern of drinking over the years does call into question his good judgment. ¶ 23(b) provides some mitigation. Applicant acknowledged his problem with alcohol in January 2008 and began taking positive steps to address it. However, there is insufficient evidence, at this time, to establish a pattern of sobriety, also required under this guideline. Based on his participation in a treatment program

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<sup>1</sup> In addition to an evaluation by the clinical psychologist, Applicant submitted a substance abuse assessment from a professional clinical counselor, who is also a licensed independent chemical dependency counselor. The counselor diagnosed him as having a history of alcohol abuse.



with an EAP counselor, who gave him a favorable prognosis due to his participation, AG ¶ 23(c) has some application. AG ¶ 23(d) is not applicable to the facts in this case, because Applicant did not enter a formalized treatment program, as implied under this guideline.

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “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. Based on the evidence, the Government raised a potential concern under AG ¶ 31(a) “a single serious crime or multiple lesser offenses.” Applicant was convicted of a misdemeanor in 1996, 2002, and 2005.

AG ¶ 32 provides conditions that could mitigate security concerns raised under this guideline. The evidence in this case creates some mitigation under two of them: “(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;” and “(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without the recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.”

Applicant's last incident of criminal conduct occurred in May 2005, three years ago, and under circumstances that are not likely to be repeated, given the change in his family dynamics. In the last several months, Applicant has demonstrated a commitment to sobriety and exhibited sincere remorse over his conduct. He continues to maintain a strong employment record and begun participating in his church's community. All of those actions document evidence of successful rehabilitation.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following: (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 eligibility for

a security clearance must include 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, including Applicant's candid testimony. Applicant is an intelligent and successful 47-year-old man, who has worked for his employer for more than 30 years and has received the support of many colleagues. He has successfully held a security clearance for 25 years, including the time he served in the military. There is no evidence of misconduct in his record since May 2005.

Applicant began consuming alcohol in high school. By the mid-eighties he was drinking excessively and consistently, a pattern that has not essentially varied until January 2008. Despite alcohol assessments in 1996 and 2002, after incidents that arose and involved alcohol, he did not take any steps to modify his routine alcohol consumption, even though one evaluator suggested participation in recovery work. After receiving the SOR in January 2008, he realized that his drinking habits could adversely affect his employment and he sought professional help.

Since seeking assistance, Applicant began regularly attending a church recovery program and outside AA meetings. His relationships with his family have improved. He recognizes that he "was in denial" about his alcoholism and the problems it created in his life until he received the SOR. He expressed a firm commitment to abstinence. He has informed his employer and friends of his problem and the potential effect it may have on his job. All of these steps represent solid evidence of his decision to change his life. However, his history of alcohol abuse spans more than thirty years, during which time he engaged in at least three criminal incidents that were indicative of poor judgment and a lack of self-control. His evidence of alcohol rehabilitation spans three months. While he appears dedicated to his recovery program, he has not established a sufficient track record of rehabilitation and good judgment, at this time, to persuade me that he has conquered his alcohol related issues.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under criminal conduct, but not those arising from alcohol consumption.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Deleted
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge