

KEYWORD: Personal Conduct

DIGEST: From 1994 to 2004, Applicant was convicted of DUI, reckless driving, disorderly conduct, assault, assault on a pregnant woman, and public intoxication. He demonstrated lack of judgment, reliability, and maturity. Applicant's behavior was primarily alcohol related. In 2003, he began attending AA counseling, and has been sober since 2004. His extensive favorable evidence shows he changed his lifestyle and is on the path to rehabilitation. During the last three years, he has established himself as a mature, dependable, and reliable person who follows rules and regulations. He has mitigated the personal conduct security concerns. Clearance is granted.

CASENO: 06-20182.h1

DATE: 07/19/2007

DATE: July 19, 2007

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In re:)  
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ISCR Case No. 06-20182  
SSN: -----  
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Applicant for Security Clearance)  
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**DECISION OF ADMINISTRATIVE JUDGE  
JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline H. Jeffreys, Esquire, Department Counsel

**FOR APPLICANT**

Leslie McAdoo, Esquire

## **SYNOPSIS**

From 1994 to 2004, Applicant was convicted of DUI, reckless driving, disorderly conduct, assault, assault on a pregnant woman, and public intoxication. He demonstrated lack of judgment, reliability, and maturity. Applicant's behavior was primarily alcohol related. In 2003, he began attending AA counseling, and has been sober since 2004. His extensive favorable evidence shows he changed his lifestyle and is on the path to rehabilitation. During the last three years, he has established himself as a mature, dependable, and reliable person who follows rules and regulations. He has mitigated the personal conduct security concerns. Clearance is granted.

## **STATEMENT OF THE CASE**

On January 4, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts and security concerns under Guideline E (Personal Conduct). The SOR informed Applicant that based on the available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information and submitted the case to an administrative judge for a security determination.<sup>1</sup> On January 18, 2007, Applicant answered the SOR and requested a hearing.

The case was assigned to me on March 26, 2007. On April 5, 2007, with the consent of the parties, I issued a hearing notice convening a hearing on April 26, 2007. The hearing took place as scheduled. The government presented 10 exhibits, marked GE 1-10, to support the SOR. Applicant testified on his own behalf and presented three witness and 10 exhibits, marked AE 1-10. DOHA received the transcript (Tr.) on June 8, 2007.

## **FINDINGS OF FACT**

Applicant admitted the SOR allegations in ¶¶ 1a-m with explanations. He denied ¶ 1n. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, particularly Applicant's demeanor and testimony, I make the following additional findings of fact:

Applicant is a 33-year-old information technology senior systems engineer working for a defense contractor. He received a bachelor's degree in information technology in 2002, and a master's degree in science in telecommunications and computers in 2006 (Tr. 103). He has been married twice. He married his first wife in

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<sup>1</sup> See Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended. On August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines (AG) 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.

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1996, and they were divorced in 1998. Applicant married his current wife in October 2005. He has a 14-month-old daughter born of this marriage.

In March 2004, he began working for a defense subcontractor. In February 2005, his current employer, the main defense contractor, hired Applicant as a permanent employee based on his outstanding performance. He has worked for his current employer since February 2005 (Tr. 100-101)

After graduating from high school in 1992, he enlisted in the U.S. Army. He served on active duty, attained the rank of specialist (pay grade E-4), and received an honorable discharge in August 1996 (Tr. 102). While in the Army, Applicant received four certificates of achievement and a military excellence award. The awards reflect favorably on his performance, dedication, and dependability.

While in the Army, Applicant also was involved in three alcohol-related incidents. In 1994, he was involved in a bar fight and received nonjudicial punishment. He was required to attend alcohol counseling (Tr. 108-109). In May 1996, he was convicted of assault at a state court. He had been consuming alcoholic beverages before this incident and was involved in a fight with a neighbor because the neighbor was talking to his wife (Tr. 193-194, GE 3).

Shortly after his discharge from the Army, he was involved in an alcohol-related fight. He was arrested and charged with disorderly conduct. He received a pre-trial diversion and was required to participate in counseling (GE 9). In January 1997, he was involved in an alcohol-related altercation with his then girlfriend and assaulted her (Tr. 191-192).<sup>2</sup> He was arrested and charged with domestic

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<sup>2</sup> Applicant's first wife left him within three months of their marriage and moved back to Europe.

violence/assault. His girlfriend refused to testify against him, and the charge was not prosecuted (GE 8).

In March 1997, Applicant was convicted for driving while under the influence of alcohol (DUI). His driver's license was suspended for one year, and he was required to attend alcohol safety action classes (GE 7). In August 1997, Applicant was involved in another altercation with his then girlfriend who was pregnant. He was charged with a second degree felony assault. He moved to another state, and failed to appear in court. In November 1997, the court issued a fugitive from justice warrant against him. Applicant voluntarily returned to the state's jurisdiction, and pled guilty to assault on a pregnant woman. He stated he spit on her, and that she fell when he move out of the way when she tried to kick him.<sup>3</sup> He was placed on one-year probation and ordered to attend anger-management counseling.

In December 1997, Applicant and a friend visited a bar, became intoxicated, and were involved in a bar fight. He was found guilty of disorderly conduct and required to pay a fine (GE 2). In February 1999, Applicant was stopped by the police for driving 20 miles over the speed limit under snowing conditions. He was found guilty of reckless driving (GE 1). The night before, Applicant had been drinking. He was so drunk he slept in his car even though it was freezing. When he tried to drive home in the morning, he was still under the influence of alcohol. The arresting police officer failed to notice he was intoxicated (Tr. 179). Applicant testified that after his license was suspended he continue to drive his car without a license. In October 2001, Applicant was arrested for public intoxication, and spent the night in jail. He was later found guilty of the offense and paid a fine (GE 1).

Between November 1996 and January 2005, Applicant held 20 different jobs. He left four of those jobs under questionable circumstances. In 1997, he was working as a medical technician. The owner of the company reprimanded him for going out to buy breakfast and eating it at the job site after having punched the clock. Applicant argued with the owner and then walked off the job. In 1999, he was working as a bartender at a restaurant and was involved in an argument with a customer. Applicant explained he complained to the owner, and not satisfied with the way the owner handled the situation, he walked off his job.

In October 1999, Applicant was working as a bartender at a restaurant. He accused his boss of shorting his tip money and he was let go. In 2003, Applicant applied for a job with a government contractor. He completed a job application and a company background investigation form.<sup>4</sup> He failed to disclose his criminal record in the background investigation form. Shortly thereafter, Applicant was asked to

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<sup>3</sup> GE 1 (security clearance application, section 23, dated August 18, 2005).

<sup>4</sup> The form was not available for review.

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complete a Standard Form 86 (SF 86) security clearance application. Applicant disclosed all his arrests, convictions, other runs-in with the law, and his questionable work history. The employer reviewed the company's background form and compared it with Applicant's SF 86. Noticing the discrepancies, the company fired him for falsifying the company's background form. Applicant denied any intent to falsify or mislead his employer (Tr. 147-148). He explained he believed the company's background form asked whether he had been convicted of any felony offenses (Tr. 150). Because the SF 86 asked specific questions, he disclosed all of his criminal records and other information in detail.

In July 2005, Applicant received a letter of reprimand from his current employer. He and a co-worker had an argument in the office, used profanity towards each other, and confronted each other in a threatening manner (Tr. 154). The president of Applicant's company believes Applicant reacted positively to the reprimand and has continued to be a top-notch, highly valued employee. He has received excellent performance evaluations. The president of Applicant's company considers this was an isolated incident and not indicative of Applicant's overall behavior (AE 10). He believes Applicant is trustworthy and reliable.

Applicant submitted four additional character reference letters from the vice-president of his company, a military supervisor, a company supervisor, and a co-worker. Some of them have known Applicant since February 2005; others have worked with and/or closely supervised him since January 2006. Applicant is a mature, responsible, reliable and trustworthy employee. Applicant's dedication, work ethic, professionalism, and technical proficiency are notable. Moreover, since working for his current employer, Applicant has had access to company sensitive and proprietary information. He has received extensive training in the handling of such information, and has had no security incidents. Applicant received the company's highest rating for security awareness and compliance with security rules and regulations (AE 1, 8).

Applicant believes that almost all his misconduct and work problems were alcohol related. He had his first alcoholic drink at age 14, and thereafter, he was hooked. During his sophomore and junior years in high school, his alcohol consumption increased. He frequently drank to intoxication and began to experience alcohol-induced blackouts (Tr. 107). From 1997 to 2001, Applicant worked mostly as a bartender in different establishments, and consumed alcoholic beverages four to five times a week (Tr. 110).

Applicant's best friend described him as an emotional, angry drunk, who suffered personality changes as a result of his alcohol consumption. Applicant was depressed and miserable, and obsessed with alcohol. In 2001, Applicant realized alcohol was taking control of his life. He stopped bartending and began his attempts to decrease alcohol consumption. He continued drinking because he had no control over his alcohol addiction (Tr. 110-113). He described himself as reckless, out of control, disrespectful, violent, and with no regard for the possible consequences of his actions (Tr. 123). Between 1997 and 2004, Applicant drove his car on numerous occasions under the influence of alcohol, and used illegal drugs (Tr. 180).

In February 2003, Applicant sought help and began attending Alcoholics Anonymous (AA). He obtained a sponsor and attended AA meetings regularly. Between February 2003 and June 2004, Applicant experienced several relapses, but always returned to AA. His last relapse was in June 2004, and was witnessed by his wife (then girlfriend) and his mother. According to Applicant, his wife, best friend, and his AA sponsor, Applicant has been sober since June 2004. He attributes his success to his spiritual awakening, the counseling received at AA, his change of lifestyle, and his commitment to his family.

Applicant attends AA meetings three to four times a week with his sponsor, and participates in other AA meetings on his own with two men he is sponsoring. He claimed his obsession to consume alcoholic beverages is gone (Tr. 133), and that he has not used any illegal drugs since 2004. Applicant no longer associates with his drinking friends, has no alcoholic beverages at home, and avoids attending places where alcohol is being served. He credibly testified he is seriously committed to his wife and daughter and to remain sober.

Applicant considers himself a recovering alcoholic. He believes his alcoholism is a manifestation of his personality; an extreme form of resentment, anger, fear, self-centeredness, and selfishness. He has learned to control these bad traits through his spiritual awakening and following the 12 steps to sobriety he learned and practices in AA.

Applicant's supervisors, friends and neighbor's statements confirmed Applicant's change of lifestyle. They believe Applicant is now devoted to his wife and child. He is considered sociable, helpful, and a good man. Applicant also

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introduced character reference letters from two men he is sponsoring into AA and from his sponsor. His sponsor is impressed with Applicant's commitment to sobriety and the positive impact he is having on others with alcohol problems. The two men he is sponsoring believe Applicant is committed to sobriety and attest that Applicant has helped them to turn around their lives.

Concerning the allegation in ¶ 1n, Applicant explained he did not disclose on his security clearance application the child born in 1998 because he does not know whether he is the father of the child. He is not identified as the father on the child's birth certificate, and there is no legal document establishing he is the father or requiring him to provide support. The child's mother has refused to allow a paternity test to determine whether Applicant is the child's father.

### **POLICIES**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,<sup>5</sup> and the

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<sup>5</sup> Directive, Section 6.3. "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2 . . ."

whole person concept.<sup>6</sup> Having considered the record evidence as a whole, I conclude Guideline E (Personal Conduct) is the applicable relevant adjudicative guideline

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>7</sup> The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.<sup>8</sup> The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.<sup>9</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.<sup>10</sup>

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<sup>6</sup> AG ¶ 2(a). "... The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . ."

<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>8</sup> ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (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); Directive ¶ E3.1.32.1.

<sup>9</sup> *Egan*, *supra* n. 6, at 528, 531.

<sup>10</sup> See *Id*; AG ¶ 2(b).



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### CONCLUSIONS

Under Guideline E (Personal Conduct), 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 ¶ 15.

Applicant admitted, and the government's evidence established, that from 1994 to 2004, Applicant was involved in 10 different incidents of misconduct. He was arrested and charged eight times for criminal misconduct; once for DUI; and once for reckless driving. He was convicted of numerous offenses, including DUI, reckless driving, disorderly conduct, assault, assault on a pregnant woman, and public intoxication. During that same period, Applicant used illegal drugs several times, and drove while under the influence of alcohol on numerous occasions. Additionally, Applicant lost his job several times because of his disrespectful behavior and disregard for rules and regulations. Disqualifying Conditions (DC) 16(c): *credible adverse information in several adjudicative issue related 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 person may not properly safeguard protected information, applies.*

Almost all of Applicant's misconduct and questionable behavior, from 1994 to 2004, was alcohol related, and occurred during a period when he was abusing alcohol. Applicant began his rehabilitation process in February 2003 by participating in AA. Initially, he failed and had several relapses; the last relapse was in June 2004.

Applicant has been sober since June 2004. There is no evidence he has been involved in any alcohol-related incidents or other questionable behavior since June 2004. Although I considered his 2005 office altercation with a co-worker, the evidence does not show the incident was alcohol related, nor did it rise to the level of questionable behavior Applicant displayed before 2004.

Applicant has made significant lifestyle changes indicative of sobriety. He no longer frequents places where alcohol is served, or associates with his old drinking friends. Since 2004, he has been employed by a government contractor who rated his job performance as outstanding. Applicant has established a reputation as a top-notch employee who is reliable and dependable. The president and vice-president of his company consider him a valued employee. He has earned the trust and respect of fellow workers and supervisors for his technical proficiency and dedication. He received training in the handling of company sensitive and proprietary information and has handled such without a glitch. He has established a reputation for following company rules and procedures, and received high ratings from his military supervisor for his security awareness.

Since 2004, Applicant completed his master's degree, married his wife, became a father, and purchased a home. His friends, co-workers, and fellow AA members consider him trustworthy, loyal, and a devoted husband and father. Moreover, his AA sponsor and the two men Applicant sponsored into AA, commented favorably about Applicant's commitment to sobriety and the positive impact he has had on their lives.

I have considered Applicant's behavior in light of the general adjudicative guidelines related to the whole person concept under AG ¶ 2(a). "Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."<sup>11</sup> The directive lists nine adjudicative process factors (factors) which are used for "whole person" analysis. Additionally, other "[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination." AG ¶ 2(a). Ultimately, the clearance decision is "an overall common sense determination." AG ¶ 2(c).

Applicant's mitigating evidence weighs towards the grant of his security clearance. In his 2003 and 2005 security clearance applications, he disclosed his questionable misconduct, including his criminal record/misconduct and past job

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<sup>11</sup> ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)).

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related problems. At his hearing, he was sincerely remorseful about his past behavior. His testimony was candid and forthcoming, never shy of disclosing the full extent of his questionable past behavior. He credibly testified he is cognizant of his disease, and satisfactorily explained the efforts he has taken during the last three years to remain sober and on the path to rehabilitation. Applicant has consistently and scrupulously participated in AA for the last three years, and although not "cured," he has changed his lifestyle and taken positive steps to remain sober.

His witnesses and character references corroborated Applicant's testimony. They show Applicant has turned his life around, and during the last three years has established his reputation as a trustworthy, dependable, and reliable person. Moreover, his behavior at work shows that he now follows rules and regulations and maintains high security awareness.

Because Applicant's questionable behavior was primarily alcohol related, I find that his three years of sobriety, considered in conjunction with Applicant's extensive favorable evidence, mitigate his past behavior. On balance, Applicant has established that he has matured, that he is reliable, trustworthy, and displays good judgment.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant's age, education, maturity, his work experience, his demeanor, and testimony. Considering the totality of Applicant's circumstances, he has mitigated the security concerns raised by his overall behavior.

### **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:  
Subparagraphs 1a -n:

FOR APPLICANT  
For Applicant

### **DECISION**

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.

Juan J. Rivera  
Administrative Judge