



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-06004
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

02/10/2015

**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant’s alcohol consumption, criminal conduct, and personal conduct security concerns are mitigated by the passage of time and his successful rehabilitation. His past questionable behavior does not raise questions about his current reliability, trustworthiness, and ability to protect classified information. Clearance granted.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on August 25, 2011, requesting the continuation of his secret security clearance granted to him in 2006. The Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline E (personal conduct), Guideline G (alcohol consumption), and Guideline J (criminal conduct) on April 25, 2014.<sup>1</sup> Applicant answered the SOR on May 16, 2014, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2014. The Defense Office of

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<sup>1</sup> The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Hearings and Appeals (DOHA) issued the notice of hearing on October 30, 2014, scheduling a hearing for December 4, 2014.

At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified and submitted two exhibits (AE 1 and 2). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on December 15, 2014.

### **Findings of Fact**

Applicant admitted all the SOR allegations, with explanations. His admissions are hereby incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor. He graduated from high school in June 2004, and completed three college semesters between 2004 and 2005. Applicant enlisted in the U.S. Marine Corps in January 2006, where he served until the end of his enlistment in December 2010. He was honorably discharged with the rank of corporal (E-4). Applicant is not married, and he has no children.

Applicant illegally used marijuana from the fall of 1999 until June 2005. He used marijuana approximately six times between 1999 and 2001. While in high school, Applicant used marijuana approximately once every two or three months. Applicant stopped using marijuana in the fall of 2003, in anticipation of applying for a position with his state's police cadet program. His application was rejected in 2004 because of the police's two-year drug free policy. Applicant entered college in September 2004, and resumed his use of marijuana. He only smoked marijuana twice while in college. Applicant testified that he has not used marijuana since June 2005. (GE 5; Tr. 25)

Applicant submitted his first SCA when he enlisted in the Marine Corps in January 2006, and he was interviewed by a government investigator in September 2006. Applicant was candid during that interview and disclosed his prior illegal marijuana use. Applicant started experimenting with alcohol in 1999. He consumed alcoholic beverages approximately once every six months from 1999 to 2003. In 2003, his alcohol consumption increased, and once a month he would drink to intoxication. Between 2004 and 2005, his alcohol consumption again increased, and he was drinking to intoxication approximately twice a month.

Applicant's alcohol consumption decreased when he enlisted in the Marine Corps in January 2006. After completing his basic training, in July 2006, he resumed his alcohol consumption and was drinking to intoxication approximately twice a month. Between August 2008 and April 2009, Applicant was deployed aboard a ship and his alcohol consumption was substantially reduced. In September 2008, Applicant went ashore on a port call with two other Marines. He was ordered to be the designated sober person of the group. Applicant disobeyed that order and became intoxicated. He received field-grade level non-judicial punishment for disobeying the order.

While on terminal leave from the Marine Corps, Applicant started working for his current employer, a government contractor. He was discharged from the Marine Corps in December 2010. In May 2011, Applicant drove after consuming alcoholic beverages and was charged with driving under the influence of alcohol (DUI). At the time, he was 25 years old. He started attendance at an alcohol counseling program in June 2011. Applicant was placed on a pretrial diversion program and was sentenced to one year of supervised probation before judgment.

Applicant disclosed his alcohol-related problems during a September 2011 interview with a government investigator. He told the investigator that between May 2011 (DUI arrest) and September 2011, he consumed alcoholic beverages four times. On one of those occasions, he consumed alcohol to intoxication. During the interview, he stated that the last time he consumed alcohol was three weeks before the interview. He claimed he did not intend to drink alcoholic beverages again because he did not want to be involved in any further alcohol-related issues.

In his November 2013 response to DOHA interrogatories, and at his hearing, Applicant stated that he intends to continue consuming alcohol in the future, but in moderation. He averred that he has not driven after consuming alcohol since May 2011. Applicant testified that he currently consumes approximately three to four beers during a three to four-hour period. He consumed alcoholic beverages four days before the hearing. (GE 2; Tr. 30-31)

Applicant expressed remorse for his alcohol and drug-related behavior. He testified that he experimented with alcohol and illegal drugs because of his immaturity and poor judgment. He has never been diagnosed as an alcohol abuser or alcohol dependent. He believes that he has matured and that he has learned from his past mistakes. Applicant loves his job and would like to continue serving his country in his current position.

## **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available,

reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline G, Alcohol Consumption**

Under Guideline G the Government's concern is that 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 consumed alcoholic beverages from 1999 to November 2014, at times to excess and to the point of intoxication. He exercised questionable judgment by consuming alcohol to excess in 2008, when he violated an order not to consume alcohol, and in 2011 when he drove while under the influence of alcohol. Disqualifying conditions AG ¶ 22(a): "alcohol-related incidents away from work, such as driving while under the influence . . . or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent" and AG ¶ 22(b): "alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent" apply.

There are two Alcohol Consumption mitigating conditions under AG ¶ 23 potentially applicable to these disqualifying conditions:

(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; and

(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).

I find that the above mitigating conditions apply and mitigate the alcohol considerations concerns. Applicant's most recent alcohol-related misconduct occurred in 2011. There is no evidence to show that he is abusing alcohol and exercising poor judgment. Applicant is consuming alcohol responsibly and in moderation.

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

Under Guideline J, the Government's concern is that 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 ¶ 30.

Applicant illegally used marijuana from 1999 to June 2005. Additionally, he drove while under the influence of alcohol in May 2011, and disobeyed a lawful order in 2008. Applicant's criminal behavior raises security concerns under AG ¶ 31(a) "a single serious crime or multiple lesser offenses," and AG ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶ 32 lists two conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

(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 recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Considering the record as a whole, I find that the above mitigating conditions apply. Applicant's offenses are mitigated by the passage of time, and there is no evidence of recurrence or recent criminal activity. Applicant has matured and he has learned from his mistakes. He understands that to be eligible for a security clearance he

must demonstrate good judgment, reliability, and trustworthiness. I note that he was candid throughout the security clearance process and readily disclosed and discussed the circumstances of his criminal conduct.

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

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

The personal conduct security concerns are based on the same facts alleged under the alcohol consumption and criminal conduct guidelines, incorporated herein: Applicant's illegal marijuana use from 1999 to June 2005, his May 2011 DUI, and his violation of a lawful order in 2008.

Applicant's behavior triggers the applicability of the following disqualifying condition under AG ¶ 16:

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

AG ¶ 17 lists conditions that could potentially mitigate the personal conduct security concerns:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

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

For the same reasons discussed above under the alcohol consumption and criminal conduct mitigating conditions, incorporated herein, I find that AG ¶ 17(c), (d), and (e) apply. Applicant's past personal conduct is mitigated by the passage of time. There is no evidence of recurrence or recent behavior of security concern. Applicant has matured and he seems to have learned from his mistakes. He understands that to be eligible for a security clearance he must demonstrate good judgment, reliability, and trustworthiness. He has been candid throughout the security clearance process. Applicant's past questionable behavior does not raise security concerns about his current reliability, trustworthiness, judgment, and ability to protect classified information.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant is a 29-year-old employee of a government contractor. He was granted a secret clearance in 2006. He has worked for a government contractor since 2009. Applicant's past misconduct is mitigated by the passage of time and his successful rehabilitation.

### **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 - 1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Paragraph 3, Guideline E:	For APPLICANT
Subparagraph 3a:	For Applicant

## **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge