



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 12-07220

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

March 1, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 3, 2012. (Government Exhibit 2.) On October 10, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and J for 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 adjudicative guidelines (AG) effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on October 28, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the Administrative Judge on December 6, 2012. A notice of hearing was issued on December 12, 2012, scheduling the hearing for January 18, 2013. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant called three witnesses, and presented six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. He also testified on his own behalf. The record remained

open until close of business on January 25, 2013, to allow the Applicant to submit additional documentation. The Applicant submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. The official transcript (Tr.) was received on January 31, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 27 years old and unmarried. He has a high school diploma, two years of college, a technical certificate in Aircraft Maintenance and military training. He is employed by a defense contractor as a Mechanic and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because he has engaged in criminal activity that calls into question his ability or willingness to comply with laws, rules, and regulations.

The Applicant admitted each of the allegations set forth under these guidelines. (Applicant's Answer to SOR.)

The Applicant served on active duty in the United States Navy from April 2005 until April 2009. From December 2007 to June 2008, he was deployed to Japan. During his military career, he consumed alcohol and drank between five to seven beers on weekends, to the point of intoxication, usually at bars by himself. He states that although he did not particularly like the taste of alcohol he consumed it because he was surrounded by a culture where drinking common place. He would go to drink to socialize, so he could talk to people, and avoid his problems.

In February 2009, he was arrested for Driving Under the Influence of Alcohol (DUI). He explained that he had been drinking at a bar that evening, and estimates that he consumed between four and five beers, before he decided to drive home. He was subsequently arrested. He pled guilty to negligent driving. His 90 day jail sentence was suspended. He was fined approximately \$868 and sentenced to twelve months probation. (Applicant's Exhibit D.) He was ordered to obtain a drug and alcohol evaluation and complete a DUI victims panel. He completed the Substance Abuse Rehabilitation Training (S.A.R.T) course in the Navy which lasted a week or two. He also completed the other court ordered sentencing requirements and felt the Judge was lenient with him. Following this DUI, his drinking continued but slowed down some. He estimates that he abstained for about six months before gradually getting back to his regular weekend drinking. (Tr. p. 85.)

The Applicant testified that when he came home from deployment to Japan he found out that his wife had been cheating on him. She subsequently filed for divorce. Without family support or coping skills it was difficult for him and caused him to increase his drinking. His friends were taking him out drinking to keep his mind off of his divorce situation. (Tr. p. 48.) He stated that he usually consumed alcohol on Friday and Saturday nights and would drink until the bar closed. (Tr. pp. 49-50). The divorce was final in June 2011.

The Applicant was arrested a second time for DUI in January 2010. He explained that he consumed about four beers that evening at a bar. He pleaded guilty to a reduced charge of reckless driving, a one day jail sentence, and was fined \$1,121.00, his driver's license was suspended for a year, and he was placed on probation for three years. He completed his final payment on the fine on January 16, 2013. He remains on probation for the offense until August 3, 2013. (Applicant's Exhibits A, B and C.)

After the second DUI, the Applicant realized that he had to make a change in his life. He told his family about his drinking and his emotional issues and asked for help. They have provided support to him that has been helpful. He completely stopped drinking for almost a year. (Tr. p. 60.) He explained that he was afraid of alcohol and what it could do to him. A year later he resumed his drinking but only at family gatherings such as barbeques and holidays with family and friends. (Tr. p. 61.) He claims that he does not like the taste of beer, but he drinks it anyway at times to be social. He does not believe that he has a problem with alcohol. (Tr. p. 75.) He explained that his grandmother was an alcoholic and he does not want to go down that same path. He stated that he is considering stopping drinking once and for all.

The Applicant testified that he has a new girlfriend. She was a heavy drinker who went through a divorce like the Applicant, but she has now stopped drinking. The Applicant is working to improve himself and has taken college courses.

Applicant's Post-Hearing Exhibit A indicates that he has decided to stop consuming alcohol altogether. He obtained an alcohol and drug assessment dated January 21, 2013, and the results indicate that he has no current struggles or problems with drugs or alcohol. (Applicant's Post-Hearing Exhibit B.)

The Applicant's roommate and coworker testified that the Applicant is a good guy who is honest and helpful. He would trust the Applicant to watch his children. He has only seen the Applicant drink a hand full of times since he met him in 2009. (Tr. pp. 92-103.)

The Applicant's mother testified that she and the Applicant have a good relationship and are communicating well. She considers him to be someone she can count on. She said he has a good head on his shoulders and she is proud of him. She does not believe he has an alcohol problem as his drinking in the past was brought on by stressors in his life. He is careful about making the right decisions, understands the consequences and has learned from his mistakes. (Tr. pp. 104-120.)

His step-father testified that since getting out of the Navy the Applicant has displayed much more responsibility and he rarely consumes alcohol. (Tr. P. 121-126.)

A letter of recommendation from his production supervisor indicates that the Applicant is on time and willing to work overtime when needed. He is intelligent, has a strong work ethic and great communication skills. (Applicant's Exhibit F.)

Applicant's performance appraisal dated July 18, 2012, reflects that he "exceeds expectations" in almost every category. (Applicant's Exhibit E.)

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline G (Alcohol Consumption)

21. *The Concern.* 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.

Conditions that could raise a security concern:

22.(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; and

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.

Conditions that could mitigate security concerns:

None.

### Guideline J (Criminal Conduct)

30. *The Concern.* 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.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple lesser offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

31.(d) individual is currently on parole or probation.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative 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 Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions

based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in alcohol abuse and criminal conduct that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in Alcohol Abuse (Guideline G) and Criminal Conduct (Guideline J.) The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines G and J of the SOR.

The evidence shows that the Applicant has been drinking alcohol to excess and to the point of intoxication since he joined the Navy. During and following his Navy career he continued to consume alcohol to excess. Although he has never been formally diagnosed as an alcoholic, nor has he received treatment for alcohol addition, his past shows signs of a serious alcohol problem. He has been arrested on two occasions for Driving Under the Influence of Alcohol. Following his arrests he stopped consuming alcohol for a year at a time, but eventually returned to his regular habit. His most recent arrest occurred in January 2010, for which he remains on probation. It is noted that his recent alcohol and drug assessment indicates that he currently has no struggles or problems with drugs or alcohol and he agreed to abstain from alcohol consumption. He is commended for this decision. However given his past drinking record, more time in sobriety is necessary to prove to the Government that he can be trusted with the national secrets. Based upon his past record of alcohol abuse, the Applicant is not eligible for access to classified information at this time.

Under Guideline G, Disqualifying Conditions 22.(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*; and 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* apply. There is no evidence in the record that any of the mitigating conditions apply. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.

In regard to his criminal conduct, under Guideline J, Disqualifying Conditions 31.(a) *a single serious crime or multiple lesser offenses*, and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*; and 31.(d) *individual is currently on parole or probation* apply. In this case, not only was the Applicant formally charged, but he was convicted, and remains on probation until August 3, 2013, as a result of his most recent arrest for DUI. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline J, Criminal Conduct.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is a young troubled drinker who already has had two DUI’s and who has only recently come to realize the seriousness of his condition and its ramifications. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has demonstrated that he is not trustworthy, and he clearly does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines G (Alcohol Consumption) and J (Criminal Conduct.)

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.

Paragraph 2: Against the Applicant.  
Subpara. 2.a.: Against the Applicant.

## **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge