



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 12-08721
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/28/2013

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On August 20, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct). The action was taken 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated September 11, 2012, Applicant admitted one of the three allegations raised in the SOR under Guideline G and denied the sole allegation raised under Guideline E. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on October 18, 2012. On that same day, the parties agreed to a November 7, 2012, hearing date. A notice to that effect was issued on October 19, 2012. The hearing was convened as scheduled. The Government offered 11 documents, which were accepted as exhibits (Exs.) 1-11 without objection. Applicant offered three documents, which were accepted without objection as Exs. A-C. He was given until December 10, 2012, to submit any additional materials. The transcript (Tr.) of the proceeding was received on November 26, 2012. On December 19, 2012, the Government forwarded to me two additional documents, which it had timely received from the Applicant and to which it had no objection. I

received those materials on December 21, 2012, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden in mitigating the security concerns previously raised. Clearance is granted.

### **Findings of Fact**

Applicant is a 35-year-old test director who works for a defense contractor supporting U.S. military communication projects. He honorably served for six years in the U.S. Air Force. Applicant has earned a master's degree in business. He is divorced. He and his ex-wife are on amicable terms and share custody of a young child. Applicant is highly regarded at work and receives very high praise from his facility security officer.

In late March 2010, Applicant went on-line to pay a ticket related to an expired vehicle inspection sticker. While searching his county's website for violations under his surname, he discovered that his wife had been charged with indecent exposure. This information led to his discovery that his wife, with whom he was attending counseling, was having an extramarital affair. Having only been married for seven years and with a four-year-old child, the news exacerbated their marital problems and devastated Applicant emotionally. Heretofore Applicant had only been a social and responsible user of alcohol and had not been involved in any other alcohol-related incidents.<sup>1</sup> The news of his wife's duplicity also caused Applicant to start drinking alcohol to excess.

On one occasion in mid-April 2010, around the time Applicant discovered his wife was going to leave him to marry another man, he drank to excess. The alcohol fueled his anger and enraged his otherwise calm demeanor. He and his wife had words. Eventually, he prepared to leave the home, then she directly left the house with their child. Applicant unsuccessfully asked her where she was going. She did not respond to his entreaties. Out of rage and frustration, Applicant ultimately punched his fist into the car window, breaking the window. Shaken, Applicant's wife drove to a nearby police station to report the incident, but she did not press charges against Applicant.<sup>2</sup> Charges, nevertheless, were brought against Applicant.

The following day, Applicant's wife drove Applicant to the police station so he could turn himself in. She again urged the city not to bring charges against Applicant. The couple was ordered to stay apart and cool off.

During this time, Applicant spoke with his counselor, with whom he had been meeting regarding his marriage and his overall emotional state. Applicant felt like he was having a meltdown and wished to seek mental health treatment immediately. They decided he would voluntarily seek "help for his depression/anxiety, suicidal thoughts

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<sup>1</sup> See, e.g., Ex. 2 (Interrogatories), at 3 and 5; Tr. 24-25. Indeed, there is no indication Applicant has ever been involved in any other significant criminal incident except for a 2008 open container incident.

<sup>2</sup> Ex. B (Ex-Wife's letter, dated Dec. 18, 2012). The city ultimately pressed charges on Applicant's wife's behalf, despite her requests that such charges be withdrawn.

and anger issues.”<sup>3</sup> With his wife, they discussed the matter. It was decided he would seek expedited inpatient care at a nearby facility as an at-risk patient. On or about April 26, 2010, she drove him to the local hospital’s emergency room and stayed with him in his room till he was prepared for transport to the inpatient care facility as a potential suicide risk.<sup>4</sup> She then went with him to that facility, where she helped him with the admissions process. He was admitted for depression and mental issues.<sup>5</sup> During his treatment, which lasted about five days, she participated in all family counseling sessions and visited him to add support to his treatment.

During the discharge process, no reference to a diagnosis of alcohol dependency was made to Applicant or his wife.<sup>6</sup> Applicant was given a Discharge and Aftercare Plan, which he signed as received. It did not mention alcohol dependence. Instead, it noted that he had been admitted as an at-risk and should be fast-tracked to the earliest available therapy appointment. It listed medications at prescribed dosages “to be taken after discharge,” including two anti-depressants and a sleep aid.<sup>7</sup> At the bottom of the second page, following the signatures of the registered nurse on duty at discharge and of Applicant, are two boxes for encoded information regarding “reason for admission” and “discharge diagnosis.” Neither box indicated a source for the codes used, nor any other explanation as to their significance. Applicant did not know what the coding or numbers meant.

In the Discharge and Aftercare Plan’s box for discharge diagnosis is the code 305.00. This is a medical indicator based on the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition (DSM-IV). Notice is taken that 305.00 indicates alcohol abuse, which is distinctly different from the diagnosis code for alcohol dependent (303.90).<sup>8</sup> There is no evidence indicating Applicant would have any reason to be familiar with the DSM-IV or medical encoding. Given the nature of the rest of the form (medications, depression, etc.), he assumed his diagnosis was of the mental health variety. No reference is made to alcohol or its use in the Discharge and Aftercare Plan, nor is there any noted prohibition to his use of alcohol. Applicant and his wife then left the facility. Applicant’s wife continued with her support of Applicant after his treatment.<sup>9</sup>

The source for the SOR’s allegation that Applicant was diagnosed as alcohol dependent apparently comes from the Government’s Ex. 7. Although stapled as one document, it consists of four parts. The first is Applicant’s patient history and

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<sup>3</sup> Ex. B (Ex-Wife’s letter, dated Dec. 18, 2012).

<sup>4</sup> Ex. C (February 27, 2013, Discharge and After Care Plan, dated Apr. 29, 2010).

<sup>5</sup> Tr. 27.

<sup>6</sup> Ex. B (Ex-Wife’s letter, dated Dec, 18, 2012) and Tr. 27, 82-86, 111-112.

<sup>7</sup> Ex. C (February 27, 2013, Discharge and After Care Plan, dated Apr. 29, 2010) at 2.

<sup>8</sup> See, e.g., Exs. 7-10

<sup>9</sup> The couple separated and, in August 2010, divorced.

admissions information from the psychiatric facility, the initial paperwork from the treatment facility when Applicant was seeking to be fast-tracked to therapy. Applicant denies having been given this document during his stay at the facility. It is signed by the attending physician only. It includes information gained from Applicant regarding his past and present condition on admission. This includes multiple references to anxiety, depression, and mood swings. It also references a recent increase in alcohol consumption, and uses the term “alcohol dependence.” It notes Applicant’s desire to receive mental health care. It documents a change in Applicant’s psychiatric and other medications by the admitting doctor. It reflects that Applicant agreed to the doctor’s recommended treatment plan, which consisted of prescription adjustments and family therapy meetings. The doctor wrote that the discharge goals would be to stabilize Applicant’s mood, free him from alcohol, and make him no longer violent or aggressive towards himself or others. In contrast to the recommended treatment plan, there is no mention of Applicant’s acceptance of those goals. There is no evidence contradicting Applicant’s testimony that he was unaware of this doctor’s notes in 2010.

The second part is a similar report from a doctor from the facility’s emotional recovery unit. It only notes that admission was based on depression and psychiatric issues. It is only signed by the physician. The third part is a blood report issued by a laboratory in another city. The fourth part is the Discharge and Aftercare Plan submitted by Applicant as Ex. C, signed by him on April 29, 2010, and discussed above.<sup>10</sup>

Applicant also denies ever having been told to not use alcohol in the future.<sup>11</sup> Consequently, he has resumed social and moderate alcohol consumption. He sometimes has two to four beers about twice a week when he is using alcohol. He has not been imbibing recently due to severe acid reflux. His past transient psychological problems have been resolved and he is receiving appropriate medication. Although there is no evidence Applicant actually took his medications with alcohol, he was unaware or failed to appreciate that his medications and alcohol may be contraindicated.

In light of all of the above, Applicant denied ever having been diagnosed as an alcohol abuser or alcohol dependent when he was interviewed by investigators in June 2010. At the same time, unaware of any prohibitions to its use, he also volunteered that he used alcohol. He remained unaware of any indications to the contrary through at least the end of December 2011.

No alcohol-related charges were brought against Applicant for the April 2010 incident. He was treated as a first offender in a domestic situation. Pursuant to the

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<sup>10</sup> Tr. 85-93.

<sup>11</sup> Tr. 93. (“He did not advise me not to drink alcohol. It doesn’t say that. It says we discussed not drinking alcohol.” “You remember that conversation?” “It wasn’t a goal.”) Applicant does not dispute that the admitting physician indicated in the admissions report that a goal of therapy would be to make Applicant alcohol-free. He disputes, however, that they ever discussed his requiring abstinence. *See also* Tr. 82.

court's order, he completed an anger management course in October 2010.<sup>12</sup> Charges remained pending through December 2, 2012, at which point the case was dismissed in light of Applicant's good behavior.<sup>13</sup>

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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. The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>14</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>15</sup>

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.

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<sup>12</sup> Ex. 2 (Interrogatories) at 9.

<sup>13</sup> *Id.*; Tr. 28. The record varies as to whether the December dismissal date is for 2012 or 2013. Ex. E (Court Record) shows the charge to be dismissed with prejudice on December 6, 2012.

<sup>14</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>15</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.<sup>16</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>17</sup>

## Analysis

### Guideline G – 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.<sup>18</sup> In this case, Applicant was intoxicated when he punched his hand through his wife’s car in a fit of anguish and rage over their crumbling marriage. The incident was the culmination of a period of stress, mood swings, depression, and excessive alcohol use brought on and exacerbated by marital problems and familial stress. The admitting physician at a treatment facility wrote in his report that Applicant was alcohol dependent, while another doctor wrote a DSM-IV designation code number signifying a diagnosis of alcohol abuse in Applicant’s discharge materials. These facts are sufficient to give raise to Alcohol Consumption Disqualifying Conditions –

*AG ¶ 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),*

*AG ¶ 22(c) (the 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), and*

*AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence).*

Consequently, the burden shifts to Applicant to mitigate related security concerns.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> AG ¶ 21.

The events at issue occurred nearly three years ago and the behavior is not typical. Other than an open container citation in 2008, there is no evidence Applicant has had any other incidents of note regarding his alcohol consumption or any other sort of criminal conduct. Moreover, the incident in question occurred during a distinctly atypical and anguished chapter in his life. Specifically, while undergoing counseling to save his marriage, he discovered his wife was having an adulterous affair. The prospect of a broken home, especially in the presence of a very young child, led him to depression, anxiety, and mood swings, all of which he had tried to control through medications, and an excessive use of alcohol. Matters worsened when he discovered she was preparing to leave him and marry her lover. Ultimately they worked through their problems, divorced, and are now on amicable terms.

Moreover, it is notable that once the incident at issue occurred, Applicant was quick to act. He actively sought out mental health treatment, rather than focusing on the arguably more immediate issue of a charge for domestic abuse. He called his counselor without haste, chose an expedited method for being sent to treatment, said and did what it took to get admitted to immediate treatment, and successfully completed his treatment. He has done his best to keep his behavior in check and worked to assure that there will not be a repeat of this singular occurrence. As a safeguard, he continues to see a medical professional as needed. He takes his personal behavior, conduct, and mental health seriously. Now, when he does consume alcohol, he does so responsibly. In light of these facts, I conclude 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*).applies. None of the other mitigating conditions apply.

### **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because 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.<sup>19</sup> In addition, any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process is of special interest.<sup>20</sup>

Applicant is alleged to have “deliberately provided false or misleading information” during a 2010 interview when he denied ever having been diagnosed as an alcohol abuser or being alcohol dependent. It goes on to state that he sought to conceal a diagnosis of being an alcohol dependent and that he had been advised not to drink alcohol in the future. Applicant flatly denies these allegations.

As noted above, Applicant denies having known that he had been diagnosed as an alcohol dependent and he has raised facts indicating that he was unaware that such

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<sup>19</sup> AG ¶ 15.

<sup>20</sup> *Id.*

a diagnosis had been made. There is no evidence that Applicant even received a copy of the admitting physician's report. There is no evidence reflecting what that doctor discussed with Applicant upon admittance or during treatment. There is no evidence that evidence Applicant was ever made privy to the contents of that report. Indeed, the admission report seems to be designed more for establishing baseline notes on a patient than as a record to be reviewed or otherwise shared with a patient admitted on an expedited basis due to mental health issues.

Moreover, the accuracy of that document is suspect. Upon discharge less than a week later, a notation was made for the code indicating a diagnosis of alcohol abuse, not alcohol dependent. The clinical distinction between these two diagnosis is significant. Regardless, there is no evidence showing that Applicant was advised that he had a particular diagnosis in a true clinical sense. Rather, Applicant entered treatment fearful of a mental health meltdown. During his five days in the facility, his medications and dosages were altered, family counseling with his wife was conducted, and his sleep patterns were noted. When he received his Discharge and Aftercare Plan, all these were summarized. There was no reference to alcohol made in layman's terms. To one unversed in the DSM-IV, the numerical codes listed in a box at the bottom of the form could have meant anything from insurance processing reference codes related to a diagnosis or in-house statistics for a particular therapy. The bottom line is that there was no need for Applicant to inquire about the numbers at the end of his discharge form, so he was discharged not knowing of the intake doctor's diagnosis.

Absent knowledge of an alcohol-based diagnosis, Applicant cannot have deliberately provided false or misleading information when he denied ever having received that diagnosis. Similarly, without evidence showing Applicant had been advised not to drink in the future, his denial that he had been so advised cannot have been false or misleading. The allegation set forth requires a deliberate attempt to falsify or mislead. Here, there was no such attempt. Therefore, no personal conduct disqualifying conditions are sustainable.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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, as well as the whole-person factors. Applicant is a mature man who served in the United States armed services honorably. He has earned a master's degree in business administration. Divorced in 2010 after his wife's adultery and other marital issues, Applicant is currently on amicable terms with his ex-wife, with whom he is raising a young child.



Applicant discovered that his former wife was having an affair between March and April 2010, while they were in marital counseling. Already in counseling from the depression and anxiety their marital issues had caused, the discovery exacerbated his mental health issues and he started using alcohol excessively. During an argument in April 2010, he punched his hand through his wife's car window. The fit of rage was atypical. After he and his wife calmed down and Applicant turned himself in to the police, Applicant called his counselor for immediate help. Feeling the accumulated emotions of the past months were leading to an immediate meltdown, his wife drove him to the emergency room of a local hospital so he could fast track his admission into a local mental health facility.

After intake, the admitting physician completed notes. Those notes included information volunteered by Applicant, recommended a treatment plan regarding medications and family therapy meetings, and outlined the physician's goals. Although the doctor noted that Applicant agreed to the treatment plan, there is no evidence Applicant agreed with the doctor's notes, agreed with the doctor's goals, or was aware of the assessments made in document. Alcohol dependence, as defined as a diagnosis under the DSM-IV, was not an issue during treatment, nor was it discussed at discharge. Applicant denies ever having been told he was alcohol dependent, and there is no evidence that he was ever advised this one physician had drawn that conclusion.

Moreover, on discharge, Applicant was given paperwork for discharge and aftercare. That document included a special box including a numerical code which, if cross-referenced with the DSM-IV, would reveal that one of the diagnoses was for alcohol abuse. Applicant, then in his early 30s, had a professional background in military communications and an educational background in business. There is no reason for such an individual, no doubt eager to go home, to dig into the minutiae contained on a standard discharge form that otherwise served as a concise summary of his treatment. Given these facts, Applicant's denial to investigators that he had never received a diagnosis of alcohol dependence comfortably fits with the facts as he knew them at the time. Therefore, there was no attempt to deliberately falsify or mislead when he answered their question in the negative, or continued to use alcohol after his discharge.

Applicant's period of excessive drinking in early 2010 was apparently part of the overall depression and anxiety he was experiencing with the breakup of his marriage, and which worsened upon discovery of his wife's affair. With intervention and the appropriate medication, Applicant made it through that period, accepted the eventual divorce, and now works amicably with his ex-wife to raise their child. Both the period of alcohol misuse and the singular episode of violence were atypical and stand in sharp contrast to the rest of his life. It is clear that he took the initiative to seek proper medical intervention both when marital issues first arose and when the event at issue transpired. He has since endeavored to keep his mental issues and alcohol use in check. In light of these facts, I find that alcohol consumption security concerns and personal conduct security concerns have been mitigated. Clearance is granted.

### **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 E:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

### **Conclusion**

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

ARTHUR E. MARSHALL, JR.  
Administrative Judge