



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



In the matter of:	)	
	)	
	)	ISCR Case: 14-02771
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

January 30, 2015

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of abusing alcohol. His alcohol use has led to four DUI charges and three convictions. Despite in-patient treatment for alcohol, Applicant has relapsed on several occasions. Although he is currently abstaining from alcohol use, the evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On February 24, 2013, Applicant submitted a security clearance application (SF-86). On August 8, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline G (Alcohol Consumption). 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 for*

*Determining Eligibility for Access to Classified Information (AG)*, effective within the DOD after September 1, 2006.

Applicant submitted an undated Answer, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on November 17, 2014. A complete copy of the File of Relevant Material (FORM), containing seven Items, was provided to Applicant on said date, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on November 26, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He provided additional information in response to the FORM on December 23, 2014 (Reply). He did not state any objections to the Government's Exhibits, (Items 1 through 7). Department Counsel had no objections to Applicant's Reply. Items 1 through 7 and Applicant's Reply were entered into evidence.<sup>1</sup> DOHA assigned the case to me on January 21, 2015.

### **Findings of Fact**

Applicant is 59 years old. He is divorced and reported no children. He earned an associate's degree in 1977. (Item 4.) He has worked for a Government contractor since March 2012. He seeks a clearance in connection with his employment, which requires him to regularly access a military base. (Item 3; Reply.)

The SOR alleged that Applicant has been arrested for Driving Under the Influence of Alcohol (DUI) four times between 1996 and 2005, as stated in subparagraphs 1.a through 1.d. Additionally, it is alleged that he has relapsed after treatment for alcohol abuse in 2001 (allegation 1.e), and that he continues to consume alcohol despite a diagnosis of alcohol dependence (allegation 1.f). Applicant admitted allegations 1.a through 1.c, and 1.e. He denied allegations 1.d and 1.f. (Item 1; Item 3.)

On January 29, 1996, Applicant was arrested and charged with DUI; Fail to Keep Right; and Public Drunkenness. Applicant was drinking at a hotel, and left in his vehicle to obtain more alcohol. He was stopped by a police officer who observed Applicant's vehicle weaving on the road. Applicant reported that his blood-alcohol content was .30%. These charges were later dismissed, after Applicant completed a 16-day inpatient detoxification and two years of probation. (Item 3; Item 5; Item 6; Item 7.)

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<sup>1</sup> Applicant did not object to Item 5, an unauthenticated Report of Investigation (ROI), which normally would be excluded without authentication under DoD Directive 5220.6 ¶ E3.1.20. Further, he submitted a one page entry from the ROI on his own behalf in his Reply. Under the Doctrine of Completeness and because Applicant registered no objection to this evidence, Item 5 is admitted into the record in its entirety.

On September 15, 2001, Applicant was arrested and charged with misdemeanor driving under the influence of alcohol (DUI) after he “bumped the rear of a Volkswagen.” On September 22, 2001, Applicant was arrested again for another DUI; Careless Driving; and Operating Motor Vehicle Without Proof of Insurance. He was arrested after he hit a recreational vehicle. On October 30, 2001, he pled nolo contendere to the September 1, 2001, and September 21, 2001 DUIs, and was found guilty by the court. He was sentenced to probation for a year, six months in jail (with credit for 40 days served), fined, and had his driver’s license revoked for ten years. He was also required to attend DUI classes. (Item 3; Item 5; Item 6.)

Applicant is alleged to have committed a fourth DUI offense in November 2005. He indicated that the charge was not a new DUI, but a probation violation for the 2001 DUI offenses because he failed to attend the DUI classes ordered by the court in 2001. As a result, his record reflects he was again charged with DUI on November 5, 2005. He indicated that he had no driver’s license in 2005 and that he did not drive. However, Applicant offered no documentation to support his claim. The state criminal history record reflects this as a separate incident. The record contains no disposition for this arrest. (Item 3; Item 6.)

Applicant has participated in alcohol treatment twice. He participated in the 16-day, court-ordered detoxification program after his 1996 DUI. He reported that he was diagnosed with alcohol abuse during that program and was told to stop drinking alcohol. He maintained sobriety for four years after this treatment. In 2002 he participated in a 28-day in-patient treatment program. He was again diagnosed with alcohol abuse, and advised to attend Alcoholics Anonymous (AA) three-to-four times per week after treatment. He indicated he complied with that recommendation and has an AA sponsor. He stated that he has participated in the AA 12-step program. (Item 5; Reply.)

During his subject interview Applicant discussed his drinking habits. He admitted that he is a recovering alcoholic, but has had relapses during his recovery. When he consumes alcohol, he drinks a pint of Jim Beam, alone. He reported he relapsed six weeks prior to the subject interview on March 18, 2013. His relapse caused him to be moved from a less restrictive sober-living center to a more restrictive residence. Prior to that relapse, he had been sober for a year. His longest period of sobriety was six years. He intends to remain abstinent in the future. (Item 5.)

Applicant has resided in a sober-living center since February 2, 2012. He is considered to be in “good standing” and to have “exhibited good, moral character.” (Reply.) He has also been recognized by his employer for his “dedication to customer service and continued hard work.” (Item 3.) He is subject to random drug and alcohol screening at the sober-living center, and has never failed a test. He does not currently consume alcoholic beverages. (Reply.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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

### 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The conditions at issue based on Applicant's conduct are:

(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 abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional . . . of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant has a long history of abusing alcohol beginning in 1996. His alcohol abuse has resulted in four DUI charges and three convictions. He habitually consumes up to a pint of alcohol per day, when he starts to drink. He reported he has been diagnosed with alcohol abuse while in detox programs. Despite receiving treatment for alcohol abuse and professional recommendations to avoid further alcohol use, he has relapsed on numerous occasions. The above disqualifying conditions fully apply.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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.

Applicant has a lengthy history of frequent alcohol abuse, leading to a series of criminal charges. He has abstained from alcohol during extended periods, including for six years. He asserted that he is sober but failed to document the date of his sobriety. Given his long history of abusing alcohol, not enough time has passed to determine that Applicant will be successful in his efforts to remain sober. Hence, I cannot hold that recurrence is unlikely or that doubts concerning his judgment and reliability are resolved. Mitigation was not established under AG ¶ 20(a).

Applicant acknowledged he is an alcoholic and has taken action to overcome his alcohol addiction by living in a sober-living center and joining AA. However, he failed to document his current sobriety date. Given the evidence, the longest possible period for his current sobriety would be from February 2013 to present. Even if he established that he had maintained sobriety during that entire time, not enough time has passed in the past two years to establish a pattern of abstinence given his 19-year history of alcohol abuse and relapse. While he now has the assistance of the sober-living center, he has relapsed while living there in the past. Applicant failed to introduce evidence that he participated in any recent extended formal counseling, or that he has received a favorable prognosis from a duly qualified medical professional. Accordingly, Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), 23(c), or 23(d).

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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) the 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be 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 pertinent facts and circumstances surrounding this case. Applicant is a 59-year-old employee of a defense contractor. He has wrestled with alcohol addiction most of his adult life. He performs well on the job and is well liked at the sober-living center. He is on an encouraging path to recovery. However, at the present time, the risk that he will relapse into excessive alcohol consumption still exists. Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for alcohol consumption.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	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:	For Applicant

### **Conclusion**

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

Jennifer I. Goldstein  
Administrative Judge