



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03016
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: Dennis J. Sysko, Esq.

04/30/2015

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his history of problem alcohol consumption. Clearance is granted.

**Statement of the Case**

On October 20, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption, and Guideline J, criminal conduct. 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).

In an undated answer, Applicant admitted the allegations and requested a hearing. On January 23, 2015, the case was assigned to me. On February 12, 2015, a notice of hearing was issued scheduling the case for March 4, 2015. At the hearing, I

received seven Government exhibits marked as Government Exhibit (GE) 1 through 7, and 11 Applicant exhibits marked as Applicant's Exhibits (AE) A through K. I received the transcript (Tr.) on March 11, 2015.

### **Findings of Fact**

Applicant is a 34-year-old married man. He graduated from college in 2002, earning a bachelor's degree in electrical engineering. In 2008, he earned a master's degree in electrical and computer engineering. (Tr. 19)

Applicant has worked his entire career with the same company as an electronics engineer. He began as a part-time college intern in 2000. In 2003, he began working full-time. (Tr. 20) He has steadily risen through the ranks, advancing from college intern to program director. In this position, he oversees the system engineering groups, and supervises four people. He is tasked with design engineering, staffing and reviews. (Tr. 20)

Applicant is highly respected on the job. According to the company president, Applicant is one of his top employees. (Tr. 72) He annually achieves sterling evaluations, and will soon be promoted to the position of director of engineering. In this position, he will report directly to the company owner. (Tr. 74; AE F-H) Applicant has held a security clearance since 2006. (Tr. 21)

In November 2000, Applicant was arrested and charged with driving under the influence of alcohol (DUI). A search of Applicant's car corresponding with the arrest revealed marijuana and a marijuana pipe in the glove compartment, prompting the police officer to include the charges of possession of marijuana, and possession of drug paraphernalia. (GE 5 at 2-3) In January 2001, Applicant pleaded not guilty, and consented to 18 months of probation before judgment. (Answer at 1; AE A)

Applicant was required to abstain from using marijuana and alcohol during his probation, and to complete a 12-week drug and alcohol education course. (Answer at 1) Applicant completed the course in February 2001, as ordered, and was characterized by the program administrator as "highly motivated" and committed to the program. (AE B)

Applicant abstained from marijuana and alcohol while participating in counseling. (AE 4 at 1) After he completed the course, he violated the terms of probation by consuming alcohol several times, and by smoking marijuana on five occasions. (AE 4 at 1-2; Tr. 43-44) He has not smoked marijuana since March 2002. (AE 4 at 1; Tr. 40)

One afternoon in September 2012, Applicant accompanied his wife, his adult stepdaughter, and another couple to a wine festival. Applicant's wife, his stepdaughter, and the other wife went to the festival, while Applicant and the husband of his wife's friend stayed behind at a restaurant and socialized. While waiting for his wife to return from the festival, Applicant drank one beer. (Tr. 45) After his wife returned, they went to

a restaurant for dinner. Applicant had one glass of wine at the restaurant. (Tr. 46) After dinner, Applicant, his wife, and their friends went to a bar. Applicant consumed six to eight alcoholic drinks at the bar. (Tr. 47)

While driving home, Applicant was stopped by police after running a red light. (Tr. 47) Subsequently, he failed a breathalyser test, and was arrested and charged with DUI. Two days after the arrest, Applicant went to the state motor vehicle authority and surrendered his license voluntarily for 90 days. (AE D; Tr. 29) In October 2012, Applicant voluntarily enrolled in mental health and substance abuse counseling. (AE E) The counselor recommended that he attend 26 hours of outpatient treatment and to abstain from alcohol.

In January 2013, approximately two months after Applicant began counseling, he pleaded guilty to DUI. He was sentenced to 60 days in jail with 48 days suspended, and 18 months of probation. Applicant had to serve the 12 days in jail over six consecutive weekends. (Tr. 32) Probation was supervised for the first eight months and unsupervised for the last ten months. (AE C at 3)

By January 2013, Applicant had successfully completed the counseling. (AE E) During the course of counseling, he passed four random urinalyses. According to the counselor, he "was always an active participant in group sessions." (AE E) There is no record concerning whether Applicant was diagnosed as alcohol abusive or alcohol dependent.

Applicant has reduced his alcohol consumption, limiting it primarily to wine with dinner twice a week, and no longer drinks and drives. (Tr. 35-36) His alcohol consumption seldom exceeds two glasses of wine per sitting. When it does, it consists of three to four glasses of wine, at one time, every other month. (Tr. 49-50)

Applicant and his wife work together. She is the company's facility security officer. (Tr. 55) She testified that Applicant has become more conscientious about his alcohol consumption since his arrest. Now, when they go to social gatherings and plan on drinking, they arrange in advance to stay with friends or they take a cab home. (Tr. 62)

Several close friends of Applicant provided character references. According to one friend who has known Applicant for three years, he "is always in noticeable control of the amount he drinks and the pace at which he drinks." Also, he has never seen Applicant "even remotely out of control or unable to make sound and appropriate decisions." (AE K at 5) Another friend noted that although "many of [their] get-togethers involve social libations, [during] the last two years, notably, [Applicant] refrains from drinking too much, or anything at all if there is no available means of getting home, or if he is unable to spend the night." (AE K at 6)

## **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a security clearance.

## **Analysis**

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

Under this guideline, “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’s history of alcohol-related criminal offenses triggers the application of AG ¶¶ 22(a), “alcohol-related incidents away from work, such as driving under the influence . . . ,” 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.”

The following mitigating conditions under AG ¶ 23(a) are potentially applicable:

(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); 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 . . . abstinence in

accordance with treatment recommendations, such as participation in meetings of AA 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 was only 20 years old when he committed his first alcohol-related offense. However, the mitigating nature of this fact is undercut by his second DUI 12 years later. After Applicant's 2012 DUI, he voluntarily entered counseling and successfully completed it. He has not committed an alcohol-related criminal offense in more than two years. His testimony that he has reduced his alcohol consumption and no longer drinks and drives was supported by character references of several close friends. Applicant is an outstanding employee of his company and has steadily risen through the ranks during his 12 years of employment, and was wholeheartedly endorsed by the company owner. These positive facts outweigh the negative inference generated by the recurrent nature of the DUI arrests. I am persuaded that all of the mitigating conditions apply, and that Applicant has mitigated the alcohol consumption security concern.

### **Criminal Conduct**

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness [and] by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations" (AG ¶ 30). Applicant's alcohol and drug-related arrests trigger the application of AG ¶ 31(a), "a single serious crime or multiple lesser offenses."

Applicant has not used marijuana in more than ten years. His violation of the terms of probation relating to the 2000 arrest also occurred more than ten years ago. Since his 2012 arrest, he has excelled on the job, successfully completed alcohol counseling, and modified his drinking habits. Under these circumstances, AG ¶ 32(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 AG ¶ 32(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," apply. Applicant has mitigated the criminal conduct security concern.

### **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 the 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.

Applicant's two alcohol-related offenses constitute serious misconduct. However, they occurred over a period of 15 years, and the last offense was more than two years ago. Moreover, since the most recent arrest, Applicant successfully completed counseling and modified his drinking habits. These facts, together with his outstanding character references, compel me to conclude that he has mitigated the security concerns.

### **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-2.c:	For Applicant

### **Conclusion**

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

MARC E. CURRY  
Administrative Judge