



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. 14-02347

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro se*

May 26, 2015

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated April 5, 2013. (Government Exhibit 1.) On September 17, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, G, and E 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 9, 2014, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on February 18, 2015. A notice of hearing was issued on February 19, 2015, scheduling the hearing for March 17, 2015. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were received without objection. The Applicant called one witness, and presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted into evidence without objection. He also testified on his own behalf. The transcript of the

hearing (Tr.) was received on March 23, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 32 years old and is single with no children. He has a high school diploma and an Associate's Degree in Marine Technologies. He is employed by a defense contractor as a Diver Technician and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that Applicant is ineligible for clearance because he engaged in Criminal Conduct.

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that Applicant is ineligible for clearance because he abuses intoxicants.

Applicant admitted each of the allegations set forth in paragraph 1 of the SOR. He denies in part, and admits in part, the allegations set forth in paragraph 2 the SOR, and provided a clarification to his answers. (See Applicant's Response to SOR.)

Applicant has worked for his current employer since August 2011. He works twenty hours a week. This is his first time applying for a security clearance. Applicant has two other jobs, one at a medical software company, and the other as a security guard, that do not need a security clearance.

Applicant's alcohol abuse began in 2003 and continued until at least 2014, at various frequencies. Although he had his first drink of alcohol in high school, he really did not start consuming alcohol until he was twenty-one years old, in 2003. When asked about the frequency of his drinking, Applicant could not pin point it. He stated that he has never consumed alcohol on a regular basis at any time. Information he provided to the investigator during his security clearance interview reveals that it takes ten beers for him to reach the point of intoxication and a couple of shots. He drinks to the point of intoxication two to three times per years. He believes that there is no change in his behavior when he is under the influence of alcohol, and he does not feel he has a problem with alcohol. (Government Exhibit 2.)

At the hearing, Applicant stated that his drinking could vary from a couple of times a month, to once a month, or once every couple of months. (Tr. p. 79.) He does not know the last time he consumed alcoholic beverages because he very rarely drinks. He believes that the two times he was arrested for Driving Under the Influence (DUI), were the only two times he has driven inebriated or to the point of impairment. In his opinion the two times he was arrested for DUI, he did not think he was too impaired to drive, and so he did not knowingly and consciously drive drunk. (Tr. pp. 29 - 30.)

His excessive drinking to the point of intoxication resulted in two arrests for DUI, discussed below. Applicant explained that he has never consumed alcohol alone. He usually drinks at social gatherings, at friend's homes, parties, or bars. (Tr. p. 38.)

In January 2004 Applicant was arrested and charged with DUI. (Government Exhibit 3.) He testified that he was at a friend's house drinking beer all night. He left the house early the next morning, and was driving fast through a parking lot when he was pulled over by the police. Applicant was administered a field sobriety test and failed. He was convicted of DUI, sentenced to a fine, and required to complete a first offenders DUI program. (Tr.pp. 41- 42.)

In September 2005 Applicant was charged with Reckless Driving. (Government Exhibit 3.) He explained that he was turning to go into a store, while trying to catch the yellow light before it turned red. His tires were not well treaded, he lost traction, and his tires screeched. He was pulled over by the police, and cited for the violation. (Tr. pp. 35 - 36.)

In July 2011 Applicant was arrested again and charged with DUI. (Government Exhibit 3.) Applicant explained that he had been drinking beers, while playing pool, at a bar with friends. He then started driving home. He was stopped at the freeway entrance by the highway patrol. The officer told him that the reason he was stopped was for cutting someone off. The officer smelled alcohol on the Applicant's breath, and administered a field sobriety test. Applicant was convicted of the DUI in 2012, and was sentenced to a fine, placed on probation for five years, and his driver's license was suspended. He was also required to complete an 18-month alcohol-treatment program that included between 50 and 60 self-help meetings through Alcoholics Anonymous. (Tr. pp. 42 - 44, and Applicant's Exhibit E.)

In May 2013 Applicant was arrested and charged with Driving With A Suspended License. (Government Exhibit 3.) Applicant stated that he was initially stopped because his registration sticker on his car was invalid. He stated that there was a warrant out for his arrest at the time. He had missed his court date for his citation for Driving on a Suspended License, and No Proof of Insurance or Registration. When Applicant arrived at home, the police were waiting to arrest him. Applicant spent 8 hours in jail. Applicant stated that he sent his bond check in by mail, and the court had not received the check at the time of his arrest. Once this was confirmed, Applicant was released. Applicant does not know if he is on probation from this offense or not.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

Applicant completed a security clearance application dated April 5, 2013. (Government Exhibit 1.) Question 22(e) asked him if he had EVER been charged with any offenses related to alcohol or drugs. Having previously reported a 2011 DUI, Applicant answered, "NO." He failed to disclose his July 2004 arrest for DUI. Applicant

explained that he misunderstood the question. He thought that it wanted him to disclose only his arrests that occurred within the last ten years and he miscounted the years, thinking the incident occurred in 2003. (Tr. pp. 63 - 64.) Applicant testified that he took a lot of time filling out his security clearance application.

Applicant explained that he enjoys his job and would like to continue in that capacity. He is familiar with the importance of safeguarding classified information, as his father was a graduate of the US Naval Academy, and a naval pilot who worked for the defense industry after leaving the Navy. Applicant also has two uncles who graduated from the US Naval Academy, one served as a Naval flight officer, the other served in the US Marines as an Artillery Officer. Applicant has a third uncle who retired from the US Marine Corps as a colonel, who now works for a defense contractor. (See Applicant's Answer to SOR.)

Applicant's father testified that in the last five years he has seen maturity, growth and potential in his son. He believes his son has finally found his passion in life and is now working in that field. He finds Applicant to be responsible and trustworthy, and recommends him for a security clearance. (Tr. pp. 88 - 91.)

A letter of recommendation from Applicant's Program Manager indicates that Applicant is an exceptional worker in every aspect of the word, and he has earned the trust and confidence of his supervisor and fellow divers. He has matured as a solid citizen and fully supports his country. He is recommended for a security clearance. (Applicant's Exhibit A.)

A letter of recommendation from Applicant's supervisor indicates that he performs his duties with the utmost professionalism and holds himself to a higher standard than what most of his colleagues exhibit. His integrity, trustworthiness and reliability are attributes that have helped him develop into an outstanding worker, diver and developing leader. (Applicant's Exhibit B.)

A letter from Applicant's uncle, a retired Marine Corps colonel indicates that Applicant has taken full responsibility for his past misconduct and has taken action to deal with the issues. He believes Applicant is sufficiently trustworthy and reliable to hold a security clearance. (Applicant's Exhibit C.)

A letter from a past coworker of the Applicant attests to his ability to get the job done no matter what the obstacles. His attention to detail, including his reliability and trustworthiness are noted. He is considered a team player and a valuable resource. He is highly recommended for a security clearance. (Applicant's Exhibit D.)

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive set 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 J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a 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 offenses; and

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

Conditions that could mitigate security concerns:

None.

### 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;

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 E (Personal Conduct)

15. *The Concern.* 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.

Condition that could raise a security concern:

16.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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 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.”

## 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 criminal conduct, alcohol abuse, and dishonesty 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 or her a security clearance.

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

The evidence shows that Applicant abused alcohol from 2003 to at least 2014, and was charged and convicted of two serious alcohol-related arrests. Applicant was not completely open and up front about his drinking habits. In fact, he minimized them as much as possible, even to the point of saying that he believed his two DUI’s were the only times he consumed alcohol and drove while inebriated. He states that he continues to consume alcohol, but is not really sure when the last time was that he drank. He does remember drinking shots at his cousin’s wedding in 2014. Under Guideline G, Alcohol Consumption, 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. None of the mitigating conditions are applicable. Accordingly, I find against Applicant under this guideline. From the testimony of Applicant's witness, it is obvious that the Applicant has made some positive changes in his life over the past five years. Applicant is commended for these favorable lifestyle changes and is encouraged to continue to show more growth and maturity in the future.

In regard to the Applicant's history of criminal conduct, it is also fairly recent and troubling. Applicant was convicted of DUI as recently as 2012 and sentenced to five years probation. He is most likely still on probation for this offense. Under Guideline J, Criminal Conduct, Disqualifying Conditions 31.(a) *a 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* apply. None of the mitigating conditions are applicable. Accordingly, I find against Applicant under Guideline J, Criminal Conduct.

Equally as troubling in this case is the fact that Applicant was either untruthful or does not have the where-with-all to correctly complete the security clearance application. Applicant failed to disclose his 2004 arrest for DUI in response to a question that asked him if he has EVER been arrested for an alcohol-related offense. The Government relies on the representations of its defense contractors and must be able to trust them in every instance. Applicant made no prompt, good-faith effort to correct his mistake. Applicant cannot at this time be deemed sufficiently trustworthy. In fact, he has demonstrated unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. Under Guideline E, Personal Conduct, Disqualifying Condition 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Applicant is has made some very poor choices in his life, and these choices have consequences. Although he has recently been working hard to turn his life around, for many years he has shown extreme immaturity and unreliability. His long history of misconduct are indicators of poor judgment and unreliability that preclude him from security clearance eligibility at this time.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports 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.



A security clearance is a privilege, not a right. In order to meet the qualification for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the Government's national interest. Overall, based upon the seriousness of the conduct outlined here, this applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against Applicant under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption) and Guideline E (Personal 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 Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the SOR.

### **FORMAL FINDINGS**

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

Paragraph 1: Against Applicant.

Subpara. 1.a.: Against Applicant.

Subpara. 1.b.: Against Applicant.

Subpara. 1.c.: Against Applicant.

Subpara. 1.d.: Against Applicant.

Paragraph 2: Against Applicant.

Subpara. 2.a.: Against Applicant.

Subpara. 2.b.: Against Applicant.

Paragraph 3: Against Applicant.

Subpara. 3.a.: Against 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 Applicant.

Darlene Lokey Anderson  
Administrative Judge