



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



In the matter of: )  
)  
) ISCR Case No. 14-02363  
)  
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Applicant for Security Clearance )

**Appearances**

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

March 13, 2015

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the drug, alcohol, and personal conduct security concerns that arose out of his infrequent recreational drug use from September 2010 to October 2013 and his alcohol consumption during college. Applicant has been candid with the Department of Defense about his illegal drug involvement, and does not intend to use any illegal drugs, including marijuana, in the future. His alcohol consumption since graduating with his bachelor’s degree has been significantly reduced and is responsible. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 12, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On October 6, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, Drug Involvement; G, Alcohol Consumption; and E, Personal Conduct. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant responded to the SOR (Answer) on October 30, 2014 and requested a hearing before an administrative judge. The case was assigned to me on January 21, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2015, and the hearing was convened as scheduled on February 25, 2015. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 and 2, which were admitted without objection. Applicant testified on his own behalf and introduced Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was left open for the receipt of additional documentation. On February 25, 2015, Applicant presented two pages of documentation, marked Applicant Exhibit (AE) E. Department Counsel had no objections to AE E and it was admitted. The record then closed. DOHA received the hearing transcript (Tr.) on March 3, 2015.

### **Findings of Fact**

Applicant is a 23-year-old employee of a government contractor. He is single, and has no children. He graduated from an undergraduate school in May 2014. He seeks his first DoD security clearance in connection with his work. (GE 1; Tr. 12.)

The SOR alleged that between September 2010 and October 2013, Applicant used marijuana. He also consumed alcohol, at times to excess and to the point of intoxication, while attending college. Applicant was candid about his drug use on his e-QIP, in his Answer, and during his testimony. (GE 1; Answer.)

Applicant's marijuana use was recreational in nature, and occurred approximately six times between September 2010 and October 2013. He used it twice in 2010 at parties. He did not like it and did not use it again until 2013, when a girl he was dating offered it to him. He used it four times in 2013, with his last use occurring in October 2013. He never purchased marijuana. Applicant stopped using marijuana when he learned that he would be applying for a security clearance. He recognized that marijuana use was illegal and that he could not engage in illegal activities while holding a security clearance. He testified that he made a conscience decision to disassociate himself from all marijuana users, including his former girlfriend. In his post-hearing statement, he further indicated he has no desire to use any illegal drugs again. He signed a statement of intent demonstrating he would not abuse any drugs in the future. (GE 1; GE 2; Tr. 12-30; AE E.)

Applicant first consumed alcohol at the age of 17, at a friend's birthday party. He consumed alcohol approximately once per year from age 17 to 21. When he turned 21, his alcohol consumption increased significantly. He consumed alcohol approximately four times per week. He typically drank four 12-ounce bottles of beer or between six and nine ounces of liquor on the weekends. He limited himself to two bottles of beer or glasses of wine on the weekdays, a couple times per week. He consumed alcohol with his college friends. However, he graduated in May 2014 from undergraduate school and

his alcohol consumption has decreased significantly. He now limits himself to the occasional beer or glass of wine with dinner four to five times per month. He has had no alcohol-related criminal incidents. (GE 2; Tr. 20-25.)

Applicant is well respected by those who know him, as verified by the letters he entered into evidence. He is considered to be “a model employee” by his manager. He is thought to be “an honest and trustworthy person” by those that know him. He conducts himself with a “high sense of ethics.” (AE A; AE B; AE C; AE D.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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(c), 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

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.

Section 7 of EO 10865 provides that adverse 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).

## **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 condition at issue based on Applicant's conduct is:

(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.

Applicant admitted he consumed alcohol frequently, and in excess, from age 21 through age 22. The above disqualifying condition applied at that time.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns. The following condition applies:

(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.

Applicant's excessive alcohol use occurred during the final year of his undergraduate education. It involved no arrests. He has matured since he graduated and entered the professional world. He limits his alcohol consumption to an occasional one or two drinks with dinner. His excessive alcohol use is unlikely to recur, given that he is no longer a student and has an entirely different social environment. His alcohol consumption as a student does not cast doubt on his current reliability, trustworthiness, or good judgment, as attested by his manager and other colleagues. Applicant has mitigated the alcohol consumption security concerns.

## Drug Involvement

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

I have considered all of the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

(a) any drug abuse.

The Government presented sufficient information to support the factual allegation under Guideline H. Applicant used marijuana six times between September 2010 and October 2013. The facts established through the Government's evidence and through Applicant's admissions raise security concerns under the above disqualifying condition.

I have considered the mitigating conditions under Drug Involvement AG ¶ 26, and the following is potentially applicable:

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

While Applicant's illegal drug use spanned a three-year period, Applicant has made a number of significant changes in his life during the past 17 months that demonstrate his serious commitment to abstinence from illegal substances. He recognized that he was wrong to use marijuana. He ceased using all drugs prior to applying for a security clearance. He testified he immediately departs any situation where drug use is present. He disassociated himself from drug-using friends and associates. Applicant's drug use occurred largely while he was attending undergraduate school. He is now in the work force and no longer attends school. Thus, he has changed his environment. While the Directive does not define what constitutes "an appropriate period of abstinence" under AG ¶ 26(b)(3), his candor about his drug abuse leads me to accept as credible his assertions of no future intent to any illegal substance under any circumstances. Applicant has demonstrated sufficient intent not to use any illegal drugs in the future. He signed a statement of intent with automatic revocation of clearance for any violation. He has matured and understands that any illegal drug involvement is incompatible with his defense contractor employment. Applicant has presented sufficient evidence to mitigate the Government's concerns under AG ¶ 26(b).

## **Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's illegal drug use and excessive alcohol use could potentially create a vulnerability to exploitation, manipulation, or duress. AG ¶ 16(e) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant acknowledged his illegal drug use and excessive alcohol use that occurred while he was in college. He is now a working professional and no longer uses illegal substances. He responsibly limits his alcohol consumption. He is well respected by his current employer. Future unreliable, inappropriate, and illegal behavior is unlikely to occur. AG ¶ 17(c) and 17(e) apply.

## **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.

Under 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's infrequent but illegal drug use occurred six times. He was irresponsible at the time and did not recognize the seriousness of his actions. He also consumed alcohol to excess. He has now matured. He has not used illegal substances for more than 17 months after deciding that there was no room for illegal substances in his future professional life. He has significantly curtailed his use of alcohol. His changes are permanent and the likelihood of recurrence is extremely low. Applicant is respected by those who know him. He has a reputation for honesty and trustworthiness. Applicant's current reputation for honesty, coupled with his candor concerning his past drug use, adds weight to his commitment to abstain from illegal drug use. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant is eligible to be granted a security clearance.

### **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 G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	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.

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Jennifer I. Goldstein  
Administrative Judge