



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



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| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 14-02655 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

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

January 22, 2015

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**Decision**  
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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 24, 2014. (Government Exhibit 1.) On July 22, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and J 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 (DoD) for SORs issued after September 1, 2006.

Applicant responded to the SOR on September 2, 2014, and he requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to the undersigned Administrative Judge on October 21, 2014. A notice of hearing was issued on November 6, 2014, and the hearing was scheduled by video tele-conference for November 13, 2014. At the hearing the Government presented two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant presented no exhibits at the hearing. He did testify on his own behalf. The record remained opened until close of

business on November 27, 2014, to allow him to submit additional documentation. Applicant did not submit any additional documentation. The official transcript (Tr.) was received on November 24, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 32 years old and divorced. He has a high school diploma and two years of Tech Mechanic trade school. He is employed by a defense contractor as a Airplane Mechanic and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engages in criminal conduct.

Applicant admitted to each of the allegations set forth in the SOR under both of these guidelines. (Applicant's Answer to SOR.) Applicant began working for his current employer in 2010, and was laid off about a year and a half later. He was rehired in January 2014.

Applicant has a history of consuming alcohol, at times to excess and to the point of intoxication, from at least 1998 to at least July 2012. He began consuming alcohol at the young age of fifteen. He explained that he grew up in the country, and it was customary for him to consume alcohol with his family members. He normally drank between one-to-seven beers with his brothers on the weekends. (Tr. p. 24.) Over a period of seventeen years, Applicant consumed alcohol, off and on and at times to excess. There were times that he tried to stop drinking, but he eventually returned to drinking as it helped him sleep. Applicant states that although he has never been formally diagnosed as alcohol dependent or as an alcoholic, he realizes that he has a serious problem and needs help. The only treatment he has received is the court ordered DUI classes.

In 1998 Applicant was first arrested at the age of 15 and charged with Driving Under the Influence of Alcohol. He explained that his mother let him drive her car to his friend's dairy which was on the dirt road. Applicant did not have a license to drive yet. He consumed about five beers and then decided to drive to a fast food restaurant. Upon leaving the fast food restaurant, Applicant ran a stop light and was pulled over and arrested. He subsequently pleaded guilty and was convicted of DUI. He was fined and ordered to attend community service. Following this arrest, Applicant stopped drinking for about two years.

In February 2001 at the age of 18, Applicant was arrested for (Alcohol Related) Disorderly Conduct. At this point, he was consuming three-to-five beers about three

times a week. Applicant stated that he does not remember the particulars of this incident. (See Government Exhibit 2.)

Two years later, in October 2003, on the Applicant's 21<sup>st</sup> birthday he was arrested and charged with Driving Under the Influence of Alcohol, (Blood Alcohol Content over 0.08.) Applicant got drunk after consuming about seven beers, and then went to a fast food restaurant. As he was driving back, he dropped the food behind his seat. He was trying to get them while he was driving when he ran into the back of a parked semi-truck. It was determined that Applicant was legally drunk. Applicant was arrested and subsequently convicted of the DUI. He was fined, ordered to attend counseling, and sentenced to five years of probation. In May 2005, Applicant's probation was terminated as a result of the following arrest.

In May 2004, Applicant was arrested and charged with (1) Driving Under the Influence of Alcohol; (2) Driving Under the Influence of Alcohol (Blood Alcohol Content over 0.08); and 3) Driving on a Suspended License. Applicant explained that he drove to his cousin's house on a quad or ATV, and then started drinking alcohol. He forgot to put his helmet on and wrecked the ATV on the main road. A truck driver almost ran the Applicant over. Applicant was in a coma for two weeks, and was then sent to a recovery hospital for two and a half months. (Tr. P. 36.) In May 2005, Applicant was convicted of Count 2, fined, sentenced to 10 days in jail, and placed on five years probation. Following this incident, Applicant quit drinking alcohol for four or five years. He also went to DUI classes, but for the most part, he quit drinking old turkey. (Tr. p. 36.)

In about 2008 or 2009, Applicant started consuming alcohol again. He began by drinking about three or four beers, once a week. As time passed his drinking increased.

In March 2012, Applicant was charged with (1) Driving Under the Influence of Alcohol; and (2) Driving Under the influence of Alcohol (Blood Alcohol Content over 0.08). He stated that his wife had left town to go see her mother. Applicant decided he wanted to get his ring back and to file for divorce because his wife was gone too often, and he did not like it. Before he left on the 150 mile drive, to get his courage up, he consumed between three and five beers. On his way back, Applicant was stopped, arrested, and charged with DUI. In July 2012, Applicant was convicted of Count 2 and sentenced to 2 days in jail, and placed on three years of probation. Following this incident, Applicant quit drinking for about a year and a half, before he resumed drinking again. (Tr. p. 42.) Applicant currently remains on probation for this DUI conviction until July 2015.

Applicant testified that he last consumed alcohol three nights before the hearing. He consumed a 40 ounce beer, about two hours before going to sleep. He explained that it has become a ritual for him to drink at night to help him sleep.

## POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets 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 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; and

Condition that could mitigate security concerns:

None.

### Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates 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:

21. (a) a single serious crime or multiple lesser offenses;

21. (d) individual is currently on parole or probation.

Condition that could mitigate security concern:

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 . . . 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 alcohol abuse 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 a security clearance.

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

The evidence shows that the Applicant has a history of multiple alcohol-related incidents, beginning at the age of 15, involving four DUI convictions, and one conviction for Disorderly Conduct involving alcohol, that has continued to the present. Applicant has on various occasions tried to stop drinking, and at one point he was sober for four years before he returned to alcohol. Although he has never been formally diagnosed as being alcohol dependent, he realizes that he has a serious problem. He is unable to sleep unless he drinks. Given the extensive nature of his disease, Applicant's drinking is not under control and there is no guarantee that he will be able to maintain any long-term sobriety. Based upon his past record of relapse, there is a strong chance at this point that he will return to his old habits. At some point, hopefully, he will be able to demonstrate the level of responsibility required to meet the eligibility requirements to access to classified information. At this time, however, he falls short of meeting these requirements.

Under Guideline G, 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 the Applicant under Guideline G, Alcohol Consumption.

Under Guideline J, Disqualifying Conditions 21.(a) *a single serious crime or multiple lesser offenses*, and 21.(d) *individual is currently on parole or probation* apply.

None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline J, Criminal Conduct.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. Although it appears that Applicant wants to stop drinking, and has demonstrated that he can abstain from alcohol for a limited period of time, he ultimately relapses and returns to excessive and extreme drinking. He also indicates that he realizes that he needs help with his alcohol problem but he has never really gone to get it. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support 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.

Applicant has not demonstrated that he is sufficiently trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline G (Alcohol Consumption), and Guideline J (Criminal 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 the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

### **FORMAL FINDINGS**

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

Paragraph 1: Against the Applicant.

- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: Against the Applicant.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: Against the 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 the Applicant.

Darlene Lokey Anderson  
Administrative Judge