

DATE: December 11, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-01537  
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**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

Pro Se

**SYNOPSIS**

Applicant is a quality engineer for a defense contractor. In 2001, he was charged with and pled guilty to two separate offenses of being a minor in possession of alcohol. In 2004, he had two separate offenses of having an open container of alcohol, and also had an offense of operating a vehicle while intoxicated. There have been no other alcohol-related instances since 2004. He did not deliberately omit the minor in possession offenses and the operating a vehicle while intoxicated offense on his security clearance application. Clearance is granted.

**STATEMENT OF THE CASE**

On July 11, 2007, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of

Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the new Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on July 17, 2007. The SOR alleges security concerns under Guideline G (Alcohol Consumption), and Guidelines E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 19, 2007. He admitted all allegations under both Guidelines E and G, and provided some explanation for his actions. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on October 11, 2007. Applicant received a complete file of relevant material (FORM) on October 17, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He provided additional information in a letter dated November 14, 2007, received at DOHA on November 20, 2007. On November 20, 2007, Department Counsel noted no objection to consideration of the additional material. The case was assigned to me on November 28, 2007.

### **FINDINGS OF FACT**

I thoroughly and carefully reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 24-year-old quality engineer for a defense contractor. He is single. He started college in 2001, receiving a bachelor degree in engineering technology in 2005. As part of his employment with the defense contractor, Applicant submitted a security clearance application on September 28, 2006.<sup>1</sup>

Applicant admits that in March and November 2001, when he was 18 years old, he was charged with being a minor in possession of alcohol. He pled guilty both times and was fined \$155 on each of the offenses. In March and April 2004, when he was 21 years old, he was charged with having an open container of alcohol in a car. He pled guilty both times and was fined \$147 for each of the offenses.<sup>2</sup> In December 2004, Applicant was drinking beer with friends before driving back to college. He did not believe he was intoxicated. He fell asleep while driving and ran into a ditch. He failed a field sobriety test and his blood alcohol level was .11. He was charged with Operating a vehicle while intoxicated (OWI). He pled guilty, and was fined \$30, received a one year deferred jail sentence, and ordered to attend an alcohol awareness class.<sup>3</sup> He completed his period of

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<sup>1</sup>Item 4.

<sup>2</sup>Item 5.

<sup>3</sup>Item 6.

probation, and the conviction was expunged from his records.<sup>4</sup> There are no reported alcohol-related incidents since December 2004.

Applicant completed his security clearance application on September 28, 2006. In response to question 23d asking if he had ever been charged with or convicted of any offense(s) related to alcohol or drugs, Applicant responded “yes” listing the two open container offenses. He did not list the minor in possession of alcohol offenses or the OWI offense.<sup>5</sup> Applicant stated he did not list the OWI offense because he completed the sentence, thought the offense had been expunged from his record, and therefore did not need to be reported. He now believes he should have listed the offense. He did not intend to deliberately conceal the offense. He also stated that his failure to list the two minor in possession charges was an oversight. Again, he did not intend to deliberately conceal these arrests.<sup>6</sup>

## **POLICIES**

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”<sup>7</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>8</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2, amended by the new Administrative Guidelines, of the Directive sets forth the standards for determining eligibility for access to classified information, listing the disqualifying conditions and mitigating conditions to be considered for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, as well as the whole person concept.

The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (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

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<sup>4</sup>Response to FORM, dated October 26, 2007.

<sup>5</sup>Item 4.

<sup>6</sup>Item 5.

<sup>7</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup>Directive ¶ E2.2.1.

recurrence.<sup>9</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>10</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that may disqualify the Applicant from access to classified information.<sup>11</sup> Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>12</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>13</sup> The government is under no duty to present evidence to disprove any mitigating condition. Administrative Judges cannot assume or infer that any particular mitigating condition is applicable because the government does not present evidence to disprove that particular mitigating condition.<sup>14</sup> “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”<sup>15</sup> “Any doubt as to access to classified information will be resolved in favor of the national security.”<sup>16</sup>

## CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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.<sup>17</sup> Applicant’s arrests for being a minor in possession of alcohol, for possession of an open container of alcohol, and for OWI raise Alcohol Consumption Disqualifying Conditions (AC DC)

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<sup>9</sup>AG 2(a).

<sup>10</sup>See Exec. Or. 10865 § 7.

<sup>11</sup>Directive ¶ E3.1.14.

<sup>12</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); see Directive ¶ E3.1.15.

<sup>13</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>14</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>15</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

<sup>16</sup>*Egan*, 484 U.S. at 531; see Directive ¶ E2.2.2.

<sup>17</sup>AG ¶ 21.

¶ 22(a) (alcohol-related incidents away from work, such as driving 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 AC DC ¶ 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 two alcohol-related incidents in 2001 and the three in 2004 are all incidents away from work. Applicant was a minor when he was twice arrested for possession of alcohol, and a college student in his early 20s when twice arrested for having an open container of alcohol, and when arrested for OWI. The two incidents in 2001 are not considered an indication of habitual or binge drinking. However, three alcohol-related incidents in 2004, to include OWI, can be an indication of binge or habitual consumption of alcohol.

Security concerns for excess alcohol consumption can be mitigated by consideration of Alcohol Consumption Mitigating Conditions (AC MC) ¶ 23(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), and AC MC ¶ 23(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 (of an alcohol abuser)). Applicant's alcohol incidents took place when he was either a minor or a young college student. He has matured, completed college, and earned a degree. There have been no alcohol-related incidents since 2004. The security concern is for excess alcohol consumption that leads to questionable judgment resulting in concerns for reliability and trustworthiness. The open container, minor in possession charges, and one OWI do not indicate excessive alcohol consumption. It is not unusual for a minor to experiment with alcohol consumption or have alcohol in a car, or even drive after drinking. These offenses do not indicate that the individual is an excessive consumer of alcohol. These offenses happened when Applicant was young and immature. The absence of any alcohol-related incidents for over three years while Applicant attended college and matured compared with offenses that happened when he was younger shows he presently does not consume alcohol to excess. His current consumption does not cast doubt on his current reliability, trustworthiness or good judgment. The absence of alcohol-related incidents for over three years shows responsible use of alcohol, if not abstinence, and indicates Applicant has overcome his youthful issues with alcohol. I find Applicant mitigated security concerns for alcohol consumption.

Applicant's failure to list his two open container offenses and the OWI offense in response to question 23(d) on his security clearance application raises Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness). Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be trusted to properly safeguard classified information. The security clearance system depends on an individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Every inaccurate or incomplete answer on a security clearance application is a security concern falsification or omission. The falsification or omission must be deliberate and material. It is deliberate if done knowingly and willfully. A deliberate omission or false statement on a security

clearance application is a criminal offense under federal law.<sup>18</sup>

Applicant's failure to list the minor in possession offenses was an oversight. He did not believe he had to list the OWI offense because he completed the probation period and the offense was expunged from his record. These explanations are reasonable and conceivable. Since Applicant is in his early 20s and submitting his first security clearance application, he reasonably could believe that he did not have to list offenses expunged from his record. Likewise, he could reasonably not remember the minor in possession offenses because they were committed in his youth. Applicant has presented sufficient information to show his failure to list the offenses was not deliberate.

I have considered all of the evidence and the "whole person" in evaluating Applicant's security worthiness. I considered Applicant's candor and honesty in his self-evaluation of his use of alcohol. The absence of alcohol-related issues for over three years considered in conjunction with the circumstances of alcohol-related issues as a minor and college student shows that any present consumption of alcohol is not excessive and does not create a security concern. I conclude he is eligible for access to classified information.

### **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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 3.a.:	For Applicant

### **DECISION**

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

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<sup>18</sup>10 U.S. C. § 1001.

Thomas M. Crean  
Administrative Judge