



with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 2), eligibility for access to classified information is denied.

### **Findings of Fact**

DOHA alleged under Guideline G, alcohol consumption, that Applicant consumed alcohol at times to excess and intoxication from at least 2003 to at least May 2007 (SOR ¶ 1.a), that he was terminated from a job in about May 2003 for having alcohol in his system at work (SOR ¶ 1.b); that he was fired from his next employment in February 2005 for reporting to work with alcohol on his breath (SOR ¶ 1.c); that he has operated his vehicle after drinking and while still feeling the effects of alcohol (SOR ¶ 1.d); and that he realizes his consumption of alcohol is a problem (SOR ¶ 1.e). Applicant admitted the allegations with the exception of SOR ¶ 1.e. After reviewing the available evidence, I make the following findings of fact:

Applicant is a 55-year-old painter, who has worked for his present employer since April 2005 (Item 4). He seeks a security clearance for his duties. The available record does not reflect that he has held a clearance.

Applicant has been employed in a succession of blue collar jobs since January 1999. He worked as a forklift operator from January 1999 to June 2001 and as a painter until February 2002. After only a month as a stocker for a discount retailer, he went to work as a laborer on the evening shift for the local public service authority in March 2002 (Item 4).

Before reporting to work one day in May 2003, Applicant consumed alcohol (reportedly three beers) while having his lunch at home. On his arrival at work later that day, his supervisor smelled alcohol on his breath. Applicant took a breathalyzer required by his employer that confirmed the presence of alcohol in his system. He was terminated immediately for violating company policy (Item 5).

After a couple of months working as a forklift operator, Applicant was hired as a painter in July 2003. There is no evidence that his alcohol use caused him a problem at work until late February 2005. The evening before he was scheduled to report for a safety and orientation class given by a defense contractor, Applicant consumed 10 to 15 beers at a bar over three or four hours while waiting for and then playing billiards. When he left the bar at around 1330 hours, he felt a "buzz" from the beer, but felt he was in condition to drive. On his arrival home at around 1345 hours, he went to bed. At around 0645 hours, Applicant arrived at a defense contractor facility where he was scheduled to attend an orientation and safety class. He was called out of the class because a person believed to be in the employ of the defense contractor had smelled alcohol on his breath. Applicant was terminated later that day by his employer (Item 5, Item 6).

Applicant was unemployed until April 2005 when he started with his present employer (Item 4). On March 2, 2006, Applicant completed a SF 86. He reported that he

had been fired from his previous job in February 2005 for having alcohol on his breath. He did not disclose that he had been involuntarily terminated from another employer two years earlier even though his termination was within the seven-year scope of the employment record inquiry ("22-LAST 7 YRS, FIRED, QUIT, OR LEFT/UNFAVORABLE CIRCUMSTANCES?").

On or about May 12, 2007, Applicant was interviewed by an Office of Personnel Management (OPM) investigator about the circumstances under which he was terminated from his job in February 2005. Applicant told the investigator that he had consumed 10 to 15 beers until about 0130 hours before reporting for the orientation class at around 0630. He admitted that he had been terminated for having alcohol on his breath. In response to whether alcohol was a problem for him, Applicant volunteered that he had been fired from a job in 2002 or 2003 after a breathalyzer test at work confirmed the presence of alcohol in his system. Applicant added that he realized his drinking was a problem, but he denied it was a major one. He admitted that he drank to feel mellow, to unwind, and take the edge off after work. Applicant expressed his intent to continue to drink, and described his current consumption as three to four beers at home, four to five nights a week (Item 5). On May 24, 2007, Applicant provided a written affidavit in which he acknowledged he had consumed 10 to 15 beers into the early hours of the morning that he had to attend the orientation class at a defense contractor site, and he was terminated from his job later that day in February 2005 for having alcohol on his breath (Item 6).

In October 2007, DOHA provided Applicant with a copy of the investigator's report of his interview on May 12, 2007, and asked whether the information was accurate. On October 10, 2007, Applicant indicated he did not recall telling the investigator that he had a blood alcohol content of .04% when he was terminated from his position with the public service authority (Item 5).

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining a favorable security 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 that 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 Executive Order 10865 provides that 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**

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

The security concern relating to the guideline for alcohol consumption is set out in AG ¶ 21: “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 untrustworthiness.” The record before me for review contains little detail about Applicant’s consumption in terms of frequency or quantity. What is known is that Applicant was fired from his job in about May 2003 when he reported for work with alcohol in his system from drinking beer at lunchtime. He drove his vehicle home from a bar in February 2005 after drinking 10 to 15 beers into the early hours of the morning and was fired from his job for reporting for an orientation session with alcohol on his breath about six hours later. As of May 2007, he was drinking three or four beers at a sitting, four to five nights a week, and he intended to continue to drink alcohol. He acknowledged in May 2007 that his drinking is a problem, but not a major one.

AG ¶ 22(b) (“alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent”) applies. There is no evidence that Applicant was intoxicated when he reported to work in May 2003, but he does not dispute that he was terminated for having alcohol in his system on that occasion. He also allowed alcohol to negatively impact his judgment in February 2005. Knowing that he had to attend an orientation at a defense contractor site the next day, he drank to such excess that he was not allowed to complete the session. The incidents were viewed as serious by his respective employers, who terminated his employment within hours. Moreover, although there is no evidence he has ever been arrested for drunk driving, he admits he felt “buzzed” after drinking the 10 to 15 beers in February 2005, not only when he drove home from the bar but also when he awoke at around 0400 hours. AG ¶ 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”) also applies.

None of the Guideline G mitigating conditions apply. While there is no evidence that alcohol has impacted his judgment in his current job, I am unable to conclude that “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 [his] current reliability, trustworthiness, or good judgment” (AG ¶ 23(a)). He admitted in May 2007 that his drinking is a problem, yet he was still consuming three or four beers at home, four to five nights a week. He did not indicate one way or the other whether he was still drinking outside of the home, such as when playing billiards at a bar as he had in February 2005 or in other situations. But he also showed no inclination to change his behavior. He indicated he intended to continue to drink and did not intend to seek counseling. When he answered the SOR, Applicant denied that his alcohol consumption was a problem, but he offered no evidence of a favorable change in his drinking habits. Under the circumstances, AG ¶ 23(b) (“the individual acknowledges his or her alcoholism or issues of 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)”) does not apply. Both AG ¶¶ 23(c) and 23(d) require the individual undergo treatment, which Applicant has no intention of doing.

### **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.” 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 the facts and circumstances surrounding this case. Applicant has lost two jobs due to his drinking. Reporting to work while under the influence of alcohol is clearly incompatible with the fiduciary obligations that come with classified access. Applicant has made no effort to show that he has appreciably changed his drinking behavior. Given his expressed enjoyment of drinking (“he likes to drink to feel mellow, unwind and take the edge off after work,” Item 5), his intent to continue drinking as he had been, and denial of any intent to seek counseling, the risk of future alcohol abuse cannot be safely ruled out.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

ELIZABETH M. MATCHINSKI  
Administrative Judge