



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



In the matter of:

-----  
SSN: -----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 07-03013

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: Kenneth M. Roberts, Attorney At Law

July 30, 2008

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on November 7, 2005. On December 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 3, 2008. He answered the SOR in writing through counsel on March 6, 2008, and requested a hearing before an Administrative Judge. DOHA received the request on April 7, 2008. The case was assigned to this Administrative Judge on April 10, 2008. A notice of hearing was issued on April 17, 2008, and the matter was scheduled for hearing on May 8, 2008. On April 24, 2008, Applicant's Counsel requested a continuance based upon good cause. A

continuance was granted, and the matter was rescheduled for hearing on May 29, 2008. The hearing was held on that date. The Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were received without objection. The Applicant called two witnesses and presented nineteen exhibits, referred to as Applicant's Exhibits A through S, which were received without objection. The Applicant also testified on his own behalf. The Government motioned to amend allegation 1(a) of the SOR to reflect "March of 2004 to May 2004." Applicant's Counsel had no objection, and said amendment was made. DOHA received the transcript of the hearing (Tr.) on June 20, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, specifically pages 212 through 214. Applicant's Counsel objected, but was overruled. (Tr. pp. 121-124). The documents were not admitted into evidence but were included in the record.

### **Findings of Fact**

The Applicant is 50 years old and unmarried. He has a Master's Degree in Electrical Engineering. He is employed by a defense contractor as an Engineer, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

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

The Applicant began consuming alcohol at the young age of fifteen. As time passed, his social drinking on weekends progressively worsened to daily use. From 2002 until August 2005, the Applicant consumed as much as a pint of bourbon a day, every day, for weeks at a time. During late 2003 through 2005, the Applicant's alcohol consumption became so excessive, that through intervention by friends and family he was convinced to seek treatment for his addiction. He explained that he was lonely, his job had gone from being exciting to one big pile of stress, and he had lost touch with God.

From March 2004 to May 2004, the Applicant received outpatient treatment for his excessive alcohol consumption and for the first time was diagnosed with, among other things, "alcohol dependency". (Government Exhibit 6).

A year later, in June 2005, the Applicant was admitted to the hospital for detoxification. His blood alcohol content was .168 upon admission, and he complained of tremors, blackouts, hallucinations, hypertension and appetite loss. He was again diagnosed with "alcohol dependency". (Government Exhibit 7).

Two months later, in August 2005, the Applicant was again admitted into a hospital for detoxification. His blood alcohol level was .165 upon admission. At that time, he admitted to drinking a 1/5 of vodka per day to include the day of his admission. He was again diagnosed with "alcohol dependency". The Applicant was also diagnosed with clinical depression and chronic insomnia by his medical physician and psychologist and it was explained to him that he was self-medicating himself with alcohol. (Government Exhibit 8).

Since January 2004, the Applicant has attended psychotherapy sessions weekly to bi-weekly related to depression. He abused alcohol in isolation at home primarily on the weekends to cope with his feelings. In August 2006, he started taking anti-depressants which have proven to be very helpful. (Applicant's Exhibit H and Government Exhibit 5).

In 2006, the Applicant called in sick to work for a day or two because of the effects of his drinking. For example, when the Applicant learned that his security clearance was in jeopardy last year, he fell into depression and binged on beer and Jack Daniels for several days. (Tr. p. 93). He testified that he abstained from alcohol for several months at a time, and could go as long as six or eight months between relapses.

In August 2007, the Applicant stated to the Government investigator that he has a glass or two of wine or beer when he goes out with social groups or with dinner. He consumes alcohol in this manner about three to five times a week. (Government Exhibit 4). Since then, the Applicant has somewhat reduced his drinking. He states that he no longer drinks and drives. The last time he drank to the point of impairment or intoxication occurred about a month before the hearing. (Tr. pp. 115 -116). On that occasion, the Applicant and his brother consumed beer and the Applicant had no more than six beers. Presently, the Applicant continues to consume alcohol in social settings, and does not believe that it is unhealthy for him to do so. He avoids drinking at home, but does keep alcohol in his home. (Tr. p. 112).

The Applicant's personal therapist diagnosed the Applicant with depression and recommended that he see his primary physician about taking anti-depressants. (Applicant's Exhibit H). The Applicant contends that his excessive alcohol consumption was episodic in nature, and occurred only during his period of depression and has since been corrected with counseling, medication, family support, a physical trainer and other major life changes. He has re-established himself with meaningful relationships in his life. He is currently taking prescribed medication for his depression and insomnia. He indicates that the feelings of depression have diminished to the point that they are rarely occur and his patterns of sleep are regular and sufficient for rest and recuperation. He

receives emotional counseling with a licensed psychologist and bi-monthly appointments with a massage therapist to reduce stress.

The Applicant also underwent a psychiatric evaluation on May 15, 2008, for purposes of this hearing to determine if he is currently "alcohol dependent". The psychiatrist, in a report dated May 27, 2008, concluded that:

To a reasonable degree of medical certainty, I find [the Applicant] to be devoid of psychiatric or substance abuse pathologies. What he has gone through was more of problematic transitional period than a profound psychopathology of addiction. He has an excellent prognosis. Highly motivated I think it's reasonable to presume that he will complete his course of treatment with his psychologist, achieve a higher level of functioning personal functioning and be able to maintain without regression or concern for relapse into self-medication with substances or any other symptoms. (Applicant's Exhibit F).

Numerous letters of recommendation from individuals that currently work with the Applicant or have worked with him in the past, including his manager and professional colleagues, as well as long time acquaintances, attest to the Applicant's overall professionalism, intelligence, talent, dedication, attention to detail and hard working nature. They consider him to be stable, reliable, honest, loyal and trustworthy. The Applicant is said to have taken the necessary steps to deal with his drinking problem and has been successful in doing so. He was awarded a performance based bonus in January, and was nominated for the company's Engineer of the Year award for 2006. He is highly recommended for a position of trust. (See Applicant's Exhibits I, J, K, L, M, N, O, P, Q, and R and Government Exhibit 3).

The Applicant has received numerous awards and special recognition from his employer for his contributions to the company. (Applicant's Exhibit G).

Testimony from two individuals that know the Applicant well, one who hired the Applicant and was instrumental in getting him involved in the Employee Assistance program, and the other who has known the Applicant since high school and considers himself to be closer than brothers with the Applicant, attest to his strong sense of integrity, trustworthiness and reliability under any circumstance. They are aware of his drinking problem, have been involved in his alcohol intervention, and continue to be supportive in his efforts at rehabilitation. (Tr. p. 28 to Tr. p. 42) and Tr. p. 43 to Tr. p. 66).

## **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.

22. (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- 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 predicted 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.”

## **Conclusion**

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). 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.

Under Alcohol Abuse, 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”*; 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, 22(d) *“diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence”* apply. None of the mitigating conditions are applicable. Accordingly Guideline G is found against the Applicant.

The Applicant's history of alcohol abuse and his diagnosis of depression have obviously gone hand in hand for many years. He has been consuming alcohol for at least 35 years, and it is uncertain how long he has had depression. On three separate occasions, the Applicant received out-patient treatment for a condition diagnosed as “alcohol dependent”, including two hospitalizations where he underwent detoxification in June and August 2005 for alcohol abuse. Despite the diagnosis, the Applicant continues to consume alcohol. He has failed to successfully complete any alcohol rehabilitation program. His recent evaluation and diagnosis from his psychiatrist indicates that his alcohol problem may be a secondary manifestation to his primary problem which is depression, however, although he has made many gains in his understanding of depression, his alcohol problem remains constant, as evidenced by his recent episode of intoxication or impairment that occurred just a month before the hearing when he drank beer with his brother. Based upon his long history of alcohol abuse, whether he is using it to self-medicate depression or not, its related negative effects on the Applicant are such that the Government is unable to find him sufficiently trustworthy to safeguard classified information. The Applicant is commended for his efforts at treating his depression, however, his underlying alcohol problem still remains and he has a way to go before he does not have to turn to alcohol to medicate his emotional or psychological issues.

I have also carefully considered the favorable statements from his manager, professional colleagues and long time friends, but that evidence does not come close to mitigating the negative effect of his excessive alcohol abuse and the effects that it can have on his ability to safeguard classified information.

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 Paragraph 1 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.

## **Conclusion**

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