



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 07-06999 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Eric Borgstrom, Department Counsel  
For Applicant: Pro Se

September 17, 2008

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on June 27, 2006. On April 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for alcohol consumption, personal conduct, and criminal conduct under Guidelines G, E, and J. 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 May 9, 2008.

Applicant answered the SOR in writing on June 5, 2008. Applicant denied the factual allegations under Guideline G that he consumed alcohol on a daily basis. He admitted the other allegation under guideline G concerning a driving while intoxicated offense for which he received non-judicial punishment while on active duty in the Air Force. He admitted three allegations of criminal conduct under Guideline J, and two

allegations of personal conduct under Guideline E. He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel requested a hearing pursuant to Directive ¶¶ E3.1.3, and E3.1.7 (Hearing Exhibit 1, request dated June 24, 2008). Department Counsel was prepared to proceed on August 18, 2008, and the case was assigned to me on August 19, 2008. DOHA issued a notice of hearing on August 20, 2008, and I convened the hearing as scheduled on September 4, 2008. The government offered seven exhibits, marked Gov. Ex. 1-7, which were received without objection. Applicant submitted 11 exhibits, marked App. Ex. A-K, which were received without objection. Applicant testified on his behalf. DOHA received the transcript of the hearing (Tr.) on September 15, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

Applicant testified in response to questions by Department Counsel that he was charged with driving while intoxicated in April or May 2008. He was found guilty of the offense on August 19, 2008, and was fined, ordered to complete an alcohol education class, and his driver's license was suspended (Tr. 50-55). Based on this information, Department Counsel moved to amend the SOR to add the following allegation under Paragraph 1, Guideline G:

"In about May 2008, you were charged with driving while under the influence in [City and State]. On or about August 19, 2008, you were found guilty as charged. You were sentenced to a fine of \$800, ordered to complete 12 hours of alcohol education classes, and your license was suspended for approximately seven months."

Applicant had no objection to the request and the motion was granted amending the SOR to add subparagraph c to Paragraph 1 under Guideline G, Alcohol Consumption, as stated above.

### **Findings of Fact**

Applicant is 44 years old and has been an air traffic control specialist and test engineer for a defense contractor for two years. This position does not require him to be alcohol free since he is not directly controlling aircraft. He previously served over 20 years on active duty with the Air Force as an air traffic controller (Tr. 22-23, 57-58; Gov. Ex. 1, e-QIP, dated June 27, 2006). He received an honorable discharge on April 30, 2005 (Gov. Ex. 7, DD form 214, dated April 30, 2005).

On August 12, 1999, while stationed in Korea as an air traffic controller, Applicant received non-judicial punishment for driving while intoxicated. He was reduced one grade, and restricted to the installation (Tr. 22-23; Gov. Ex. 6, Record of non-judicial punishment proceedings, dated August 18, 1999). He was also required by Air Force regulation to attend alcohol counseling classes. He started those classes in Korea but

changed duty stations back to the United States before completing the classes. He was told not to consume alcohol because of his duty as an air traffic controller. He participated in some alcohol counseling and abstained from alcohol consumption for about a month in Korea after the offense before he resumed the consumption of alcohol (Tr. 24-26).

After his change of station to an Air Force base in the United States in early 2000, Applicant completed alcohol evaluation and counseling and it was determined that he was an alcohol abuser. He was ordered not to drink alcohol because of his duties in air traffic control. His command requested a waiver of the prohibition for him to work in air traffic control because of the alcohol abuse diagnosis. The waiver was granted. Applicant was not to consume any alcohol if he wanted to continue in his career field of air traffic control. Applicant did not consume alcohol for about six months, but then started to again consume alcohol. He did not inform his commander that he was drinking alcohol. In 2004, a subordinate informed Applicant's commander that Applicant was harassing subordinates and drinking alcohol. The commander investigated and determined there was no harassment but Applicant admitted to the commander that he was drinking alcohol. He was removed from the duty of direct contact and control of aircraft and assigned to administrative functions until he retired in early 2005. While assigned to administrative duties, Applicant continued to drink alcohol. He was not required to refrain from alcohol consumption because he was no longer assigned to the duty of controlling aircraft (Tr. 19-36; Gov. Ex. 3, Interrogatories, dated March 2, 2007).

Applicant denied that he consumes alcohol on a daily basis (SOR allegation 1.a). He did admit that he consumed alcohol to the point of intoxication about two or three times a week (Tr. 16-17). Applicant denies that he is an alcoholic or that he has a problem with alcohol consumption. He has never been advised to stop drinking alcohol (Tr. 55-56).

Applicant admitted that he last consumed alcohol the week-end (August 30, 2008) before the hearing when he attended a wedding. He admitted to consuming six or seven drinks of whiskey and was intoxicated. He admitted he also drank to the point of intoxication the week-end before the wedding. He admitted to drinking to the point of intoxication at least once a week. It usually takes him three or five drinks to be intoxicated (Tr. 48-50).

Applicant revealed that he was arrested about four months before the hearing for driving under the influence of alcohol. He had consumed about four drinks of whiskey at a bar after work before starting to drive home. He was stopped by police for failing to maintain a driving lane and given a field sobriety test that showed his blood alcohol to be a .25. Even though he contested the accuracy of the breathalyzer, he was found guilty on August 19, 2008, and sentenced to an \$800 fine, to attend a 12 hour alcohol awareness program, and his license was suspended for seven months (Tr. 50-55).

Applicant and his wife argued on the afternoon of August 13, 2005. He had consumed alcohol the night before but had not been drinking the day of the argument. The couple pushed and shoved each other and Applicant admitted to pushing his wife to the ground twice. The police arrested Applicant for simple assault. He pled guilty to the offense and was sentenced to a fine of \$564 and ordered to attend an anger management program. Applicant and his wife were both arrested in October 2006 for arguing and assaulting each other. The charges were dismissed in court (Tr. 36-40; Gov. Ex. 4, Interrogatories, dated March 2, 2007; Gov. Ex. 5, Criminal justice report, undated).

As a result of the August 2005 incident, Applicant was required to attend an anger management course. Applicant anticipated receiving a civilian air traffic control position in the Middle East. Applicant, on his and his attorney's request, received permission to find their own anger management course rather than one run by the local court authorities. Applicant attended only two or three sessions of this anger management course before he stopped attending. He stated that he believed the matter of his need for the course was resolved and he did not have to attend any more classes because his attorney said he would send a letter to the court stating that he was attending the course. He knew he was ordered to complete the course and knew he had not completed the course but thought the matter had been resolved by his attorney. He did not discuss the matter with his attorney before deciding not to complete the course.

Applicant was questioned by security investigators concerning his attendance and completion of the anger management course. He informed the investigators that he had completed the course. He testified at the hearing that he did not complete the course but thought the matter had been resolved by his attorney. He made a conscious decision not to continue to attend the course. His attorney determined that Applicant had attended some sessions but did not complete the program. Applicant tried to make arrangements to complete the program. No arrangements were made because his original doctor is not taking new patients and he cannot find another doctor that conducts an anger management course. He has not made inquiries on available courses in months (Tr. 40-43, 60-63; Gov. Ex. 4, Attorney's letter, dated August 16, 2007).

Applicant presented his evaluation reports for his entire Air Force career. These evaluations show that Applicant was regarded as one of the best air traffic controllers in the Air Force. His performance of duty was excellent and he was considered to be the "go to person" for air traffic control issues and problems. Even though he was reduced in grade as a result of the non-judicial punishment, he was promoted again to the grade of master sergeant (E-7) before he retired (App. Ex. K, Evaluation Reports, 1984-2004).

A former supervisor and colleague stated that Applicant worked directly for him on numerous occasions. He considered Applicant to be his most trusted and competent worker and could count on him to do the job correctly. His integrity is beyond reproach and he could trust his word and judgment (App. Ex. A, Letter, dated August 15, 2008).

Another former colleague and supervisor, who knew Applicant for his entire Air Force career, stated the Applicant is a straight forward and honest individual. He has no doubt Applicant can be trusted with a security clearance and access to classified information (App. Ex. B, Letter, dated August 11, 2008).

Another former colleague and supervisor stated that he has known Applicant for over eight years while he was in the Air Force. Applicant did an excellent job as an air traffic controller. He knows of Applicant's alcohol related incident in Korea since Applicant worked for him at the time. Applicant was honest about the incident and his conduct and took responsibility for his actions. He recommended Applicant for his present civilian position. Applicant's best qualities are his honesty and truthfulness (App. Ex. C, Letter, dated August 26, 2008).

Applicant received the Meritorious Service Medal with First Oak Leaf Cluster (App. Ex. D, citation, dated January 4, 2005; App. Ex. E, Citation October 15, 1998). Applicant received the Air Force Commendation Medal and four Oak Leaf Clusters for his service in Air Traffic Control (App. Ex. F-I, Citations, Various dates).

## **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 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.

## **Analysis**

### **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 ¶ 21)

Applicant's non-judicial punishment for driving while intoxicated, his recent arrest and conviction for driving while intoxicated, as well as his continued drinking to excess to the point of intoxication at least once a week raise Alcohol Consumption Disqualifying Conditions (AC DC) AG ¶ 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 driving while intoxicated incidents are alcohol-related incidents away from work. His drinking to excess at least once a week is an indication of binge or habitual consumption of alcohol.

The SOR allegation states that Applicant generally consumed alcohol daily, that he drinks to the point of intoxication one or two times per week, and he has no intention to change his behavior. Applicant denies that he consumes alcohol almost daily, but admits that he consumes alcohol once or twice a week to the point of intoxication, and does not intend to change his alcohol-related behavior. There is no indication Applicant drinks alcohol every day, but there is ample evidence to establish that he drinks alcohol to the point of intoxication once or twice a week, and that he does not intend to change his behavior. Applicant drank to the point of intoxication the week-end before the hearing and the week-end before that. He had a recent arrest and conviction for driving while intoxicated. This shows he has no intention of changing his drinking habits and behavior.

Applicant testified that while in the Air Force he was evaluated and determined to be an alcohol abuser. There is no indication of the qualification or status of the individual that made the diagnoses. For purposes of the disqualifying condition, the person that made the diagnose must be a qualified medical person or licensed social worker in a recognized alcohol treatment program, I find the AC DC ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence), and AC DC AG ¶ 22 (e) (the evaluation of alcohol abuse or dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) have not been raised. Likewise, there is no indication Applicant was directed to attend an alcohol rehabilitation program. Therefore, AC DC, AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program) has not been raised.

Since Applicant admitted the SOR allegations and the government produced substantial evidence by way of exhibits to raise the disqualifying conditions in AG ¶ 22(a) and (c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns (Directive ¶E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government (See, ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

Security concerns for excess alcohol consumption can be mitigated by consideration of Alcohol Consumption Mitigating Conditions (AC MC) AG ¶ 23(a) (so much times 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 AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)). Applicant's most recent driving under the influence of alcohol incident was just four months ago. He admits to the continued consumption of alcohol once or twice a week to the point of intoxication. He last drank to the point of intoxication only five days before the hearing. He has a history of alcohol abuse. Because of the recent consumption of alcohol to the point of intoxication and his continued consumption of alcohol with no indications of any attempts to stop, the alcohol-related incidents are likely to recur. He has not acknowledged he has an alcohol-related problem and has not shown a pattern of responsible use. Applicant has not mitigated security concerns for alcohol consumption.

## **Criminal Conduct**

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. (AG ¶ 30) Appellant's two arrests and one conviction for a domestic related assault and battery in violation of state law, and the non-judicial punishment for driving while intoxicated in the Air Force raises Criminal Conduct Disqualifying Conditions (CC DC) AG ¶ 31(a) (a single serious crime or

multiple lesser offenses), and CD DC AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted).

Criminal conduct can be mitigated under Criminal Conduct Mitigating Conditions (CC MC) AG ¶ 32(a) (so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment), and CC MC AG ¶ 32(d) (there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.) Applicant and his wife were involved in marital disputes that led to assaults and criminal action in 2005 and 2006. The criminal charges happened in the last two to three years and not under unusual circumstances. In addition, Applicant was convicted in August 2008 of driving under the influence which shows that is criminal conduct is likely to recur and he has not been successfully rehabilitated. Applicant has not presented any information to establish that these type incidents will not happen again or that he has been rehabilitated. It is more likely that the criminal action of domestic assault will recur. Applicant has not mitigated the security concerns for criminal conduct.

## **Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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 ¶ 15) 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 entrusted to properly safeguard classified information.

The security clearance system depends on the 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. Applicant's false information to security investigators concerning the anger management course completion raises a security concerns under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(b) (deliberately providing false and misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative).

Appellant denied intentional falsification. He states that he informed the security investigator that he had completed the anger management course because his attorney informed him when he was sentenced that once he started the course, he would send a letter to the court. Applicant admits that he did not complete the course but he believed



the issue was "resolved" by his attorney. He never informed anyone, including the instructor, that he was dropping the course. He did not verify with his attorney that he could drop the course. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant knew he had not completed the course. Applicant decided himself not to complete the course. He informed the investigator that he had completed the course. He never informed him of any guidance from his attorney or that he had stopped attending classes on the advice of his attorney. I find that Applicant deliberately provided false information to security investigators.

Applicant's failure to complete the anger management course raises security concerns under PC DC AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules or regulation, or other characteristics indicating that he person may not properly safeguard protected information). As part of his sentence, Applicant was required to complete the course. The information shows he decided on his own not to complete the course and did not inform the counselor or his attorney of his intent. This indicates a willingness on the part of Applicant to follow his own rules and not those directed for the protection of classified information

I considered all of the Personal Conduct Mitigating Conditions under AG ¶ 17 and determine none apply. Applicant never made a good faith effort to correct erroneous or inaccurate information. He has not acknowledged that his information was false, but merely that he misunderstood what his attorney advised him. He deliberately decided not to follow the direction of his sentence and to take his own action.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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) 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I have considered all of the evidence and the “whole person” in evaluating Applicant’s security worthiness. I have considered Applicant’s 20 years of honorable service in the Air Force. There is no doubt that he is a gifted and talented air traffic controller who has performed exceptionally well in his field. He was honest and forthright in presenting his information concerning the consumption of alcohol at the hearing. However, Applicant had alcohol-related incidents for many years and continues to drink alcohol. He drinks to excess at least once or twice a week. His most recent excess consumption of alcohol was only five days before the hearing. He has not admitted he has an alcohol problem. He was involved in two domestic violence incidents with his wife that led to criminal activity and he provided false information concerning a course he was required to complete to security investigators. He did not complete the anger management course as required by his court imposed sentence. Applicant has not presented sufficient information to show that his consumption of alcohol, his criminal conduct, and his personal conduct are not security concerns. Overall, the record evidence leaves me with questions and doubts that Applicant will not consume alcohol to excess in the future. I have doubts about his eligibility and suitability for a security clearance because he provided false information to security investigators and engaged in domestic violence criminal acts. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his alcohol consumption, personal conduct, and criminal conduct. I conclude he is not 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: | AGAINST APPLICANT |
| Subparagraphs 1.a.:       | Against Applicant |
| Subparagraphs 1.b.:       | Against Applicant |
| Subparagraphs 1.c.:       | Against Applicant |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraph 2.a.:        | Against Applicant |
| Subparagraph 2.b.:        | Against Applicant |
| Subparagraph 2.c.:        | Against Applicant |
| Paragraph 3, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 3.a.:       | Against Applicant |
| Subparagraphs 3.b.:       | Against Applicant |

## **DECISION**

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

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Thomas M. Crean  
Administrative Judge