



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



In the matter of: )  
)  
) ISCR Case No. 07-10307  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: James E. Simpson, Esquire

May 30, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 22 October 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, J, and E.<sup>1</sup> Applicant answered the SOR 15 November 2008, and requested a hearing. DOHA assigned the case to me 20 December 2008, and I convened a hearing 5 February 2008. DOHA received the transcript (Tr.) 14 February 2008.

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<sup>1</sup>

DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant admitted the Guideline G and J allegations, but denied the Guideline E allegation. She is a 36-year-old information engineer employed by a defense contractor since April 1997. She seeks to retain the clearance she has held since March 1998.

Applicant has a 10-year history of excessive alcohol consumption, punctuated by four alcohol-related incidents: a June 1994 conviction for operating under the influence of liquor (OUIL), a March 1997 conviction for driving under the influence of alcohol (DUI), an October 2003 conviction for DUI, and a July 2004 arrest for public intoxication—for which she paid a fine. During these 10 years, Applicant estimated her alcohol consumption as 4-6 drinks twice per week. She successfully completed the sentencing requirements of each of her convictions.

At the time of the July 2004 arrest, she was still under probation for her October 2003 DUI. She did not believe that she was intoxicated at the time of the arrest, but paid the fine on-line without contesting the citation. However, she was summoned to a show cause hearing on her probation. The magistrate apparently accepted her explanation that she was not intoxicated at the time of the arrest, because she continued her on probation.

Applicant's 1994 and 1997 convictions were initially adjudicated during her first background investigation in 1998. In January 1998 she was interviewed by a government investigator. During the interview she stated her intent to not drive under the influence of alcohol in the future. She was ultimately granted the clearance that is at issue.

Applicant describes her current alcohol consumption as a couple of glasses of wine when out to dinner with her friends, no more than twice a month. She sometimes has a glass of wine with her dinner at home. She no longer goes out to bars with her friends. When she is going out to dinner with her friends and expects that she will be drinking, she makes arrangements to avoid driving herself. She has adopted a healthier lifestyle, eating better and going to the gym regularly. She has not been diagnosed as alcohol dependent or an alcohol abuse.

Applicant's employment evaluations (A.E. A) are uniformly excellent, and her work references (A.E. B) consider her extremely trustworthy. However, it does not appear that any of them are aware of the SOR allegations.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair

and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

### **Analysis**

The government established a case for disqualification under Guideline G, by demonstrating Applicant's 10-year history of alcohol abuse, punctuated by alcohol-related arrests in June 1994, March 1997, October 2003, and July 2004.<sup>3</sup> However, Applicant mitigated the security concerns. Neither the prior adjudication of the 1994 and 1997 convictions, nor the six-year gap between the 1997 and 2003 convictions, precludes the government from revisiting her alcohol consumption over the entire 10 years. Nevertheless, Applicant acknowledged her past problems with alcohol, and took steps to reduce her consumption, and avoid circumstances that had previously been

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>

¶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; . . . (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;

troublesome for her.<sup>4</sup> Her avoidance of bars, arranging alternate transportation whenever she contemplates consuming alcohol while with her friends, and her changes to a healthier daily routine demonstrate that Applicant is committed to consuming alcohol responsibly. I conclude Applicant is unlikely to abuse alcohol in the future. Accordingly, I resolve Guideline G for Applicant.

The government established a case for disqualification under Guideline J by establishing Applicant's four alcohol-related convictions between June 1994 and July 2004.<sup>5</sup> However, Applicant mitigated the security concerns. While the misconduct cannot be considered distant in time, the criminal conduct was inextricably connected to Applicant's excessive alcohol consumption. Given my conclusion that Applicant is unlikely to abuse alcohol in the future, I consider it extremely unlikely Applicant would ever engage in this misconduct again.<sup>6</sup> I resolve Guideline J for Applicant.

The government failed to establish a case for disqualification under Guideline E.<sup>7</sup> The questionable judgment shown by driving under the influence of alcohol is not made more questionable by having previously stated an intent to avoid such conduct in the future. Furthermore, returning to responsible drinking practices demonstrates good judgment, as does the passage of more than five years since the last DUI. I resolve Guideline E for Applicant.

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¶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 (if an alcohol abuser);

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¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

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¶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; (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence or criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement;

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¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; (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 and regulations, or other characteristics indicating that the person may not properly safeguard protected information. . . ;

## **Formal Findings**

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph a: For Applicant  
Subparagraph b: For Applicant  
Subparagraph c: For Applicant  
Subparagraph d: For Applicant  
Subparagraph e: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph a: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph a: For Applicant

## **Conclusion**

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

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JOHN GRATTAN METZ, JR  
Administrative Judge