



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 07-10656  
)  
)  
Applicant for Security Clearance )

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 16, 2008

**Decision**

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DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On November 14, 2006, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On January 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G (Alcohol Consumption). 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 answered the SOR in writing on February 26, 2008, and requested a hearing before an administrative judge. On April 22, 2008, DOHA assigned the case to me and issued a Notice of Hearing the same day. The case was heard on May 14, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 5 into

evidence without objection. Applicant testified in his case-in-chief. The record remained open until May 21, 2008, to give Applicant time to submit documentary evidence. On May 22, 2008, submitted three exhibits that I marked Appellant Exhibits (AE) A through C and were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 23, 2008.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.a through 1.d of the SOR and offered explanations in support of his request for eligibility for a security clearance. (Answer). His admissions are incorporated into the following findings:

Applicant is 24 years old and unmarried. In December 2005, he earned a bachelor's degree in finance and economics and graduated with honors. (GE 1; Tr. 19). In April 2006, he began a position as a cost/schedule analyst with his current employer, a federal contractor. Presently, he participates in the company's Financial Leadership Development Program, which focuses on developing the talents of specific employees whom the company perceives as possessing corporate potential. (Answer). He hopes to begin a master's program in the near future. (Tr. 42).

Applicant began occasionally consuming alcohol at the age of 17, and continued while he was in college from August 2002 to December 2005. During the first two years of college, he drank alcohol a couple times a week. From 2004 to 2005, he began binge drinking on the weekends, a couple times a month, having six to ten drinks over the course of an evening. (Tr. 68). He admitted that at times he drank to the point of intoxication from 2000 to at least October 2007. (Tr. 22).

Applicant has three incidents of alcohol-related misconduct in his background. In September 2004, he was arrested and charged with Public Intoxication. At the time, he lived in a college student-housing neighborhood. He had a drink in his house and then joined a group of friends congregating outside. He admitted that he made an inappropriate comment to a security guard that was overheard by the local police. Subsequently, the police arrested him, along with some of his friends, and took them to the police station. (Tr. 24-25). He was cited for Public Intoxication. He does not know the outcome of the case because his business law professor handled the matter for him.

On November 5, 2006, Applicant went to a bar to watch a football game. While there, he drank several beers with a friend. They decided to leave the bar at half time and pick up a 12-pack of beer to take home. While driving, he drove over a curb and hit a car. After the police arrived, he failed a sobriety test and was taken to jail. He was charged with Driving While Intoxicated (DWI). He went to court on the matter in February 2007, March 2007, and April 2007. In May 2007, he pleaded guilty to the charge, a misdemeanor. The court ordered him to pay \$900, sentenced him to 15 days of confinement, and suspended his driver's license for one year. In lieu of the 15-day confinement, he performed public service over a period of weeks. His driver's license

was suspended from June 27, 2007, until June 27, 2008. (Tr. 78). He currently has an occupational license, permitting him to drive to work. (Tr. 33). After the arrest, he moved home to live with his parents for a couple months and stopped consuming alcohol for a period of time. (Tr. 30).

During a January 2007 interview with a government investigator regarding the November 2006 DWI, Applicant asserted that he had learned his lesson and “had no future intent of repeating this behavior.” (Tr. 49).

In June 2007, Applicant’s employer sent him to another state to help with an emergency project. (Tr. 34). After arriving there, he worked several long days in a row. On the weekend, he traveled into the metropolitan area to attend a ball game. Prior to the game, he went to a bar and had three beers. During the game, he drank four beers with other people, and after the game he went to a bar where he drank another two beers. He estimated that he had about nine beers that day. (Tr. 52-53). While driving back to the hotel, the police stopped him for speeding. He failed a field sobriety test, took a Breathalyzer, and was subsequently arrested. He was charged with (1) DWI, and (2) Aggravated Driving While Under the Influence, at a Speed More than 30 mph in Excess of the Posted Speed Limit; to wit, 97 mph in a 55 mph zone. After pleading guilty to the DWI, the court suspended his driving privileges for three years (in that state) and ordered him to enroll in an approved alcohol class. He pleaded guilty to the Aggravated Driving charge and was fined. He has three years in which to complete the alcohol class; he intends to begin it within the next month or two. (Tr. 80). That was the last time he drank and drove. (Tr. 61).

Since that incident, Applicant drinks minimally and less frequently. (Tr. 82). However, he admitted that he has become intoxicated on a few occasions. In 2007, he estimates that he drank to the point of intoxication three to four times. In March 2008, he celebrated his brother’s birthday at home and drank eight to ten beers over several hours, resulting in intoxication. (Tr. 69). In explaining the reason for drinking to excess that day, he said, “I let my guard down. It was not a wise thing to do by any means.” (Tr. 85).

Applicant is very candid and remorseful about his behavior. He does not believe that he abuses alcohol or has an alcohol problem. (Tr. 73; 65). He has never been ordered to undergo an alcohol assessment, nor has he considered obtaining one. (Tr. 81; 89). Applicant never went to work after consuming alcohol. (Tr. 71). He has not made any specific decisions regarding his future consumption of alcohol, other than he will not drink and drive. (Tr. 74). His current “intentions are focused more on [his] education and career,” rather than on alcohol. (Tr. 75).

Applicant submitted Performance Assessments for the years 2006 and 2007, along with a letter from his supervisor. Each Performance Assessment rates him as a “Successful Contributor.” (AE B and C). Applicant’s supervisor wrote “He has matured significantly in the last year and I believe he has learned from the mistakes in his personal life.” (AE A). His supervisor is aware of the two alcohol convictions.

## 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 commonsense 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 to obtain a favorable security decision. 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."

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

### 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 trustworthiness.

AG ¶ 22 describes two conditions that could raise security concerns and may be disqualifying in this case:

(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; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuse or alcohol dependent.

Applicant has three alcohol-related incidents in his history. In 2004, he was arrested for Public Intoxication. In November 2006 and June 2007, he was arrested for DWIs. Based on those incidents, the Government raised a concern under AG ¶ 22(a). Applicant admitted that from 2000 up to March 2008, he consumed alcohol at times to the point of intoxication. That evidence is sufficient to raise the disqualification under AG ¶ 22(c).

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation. Conditions that could mitigate alcohol consumption are provided under AG ¶ 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;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and,

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶ 23(a) does not provide mitigation because Applicant's last DWI occurred less than a year ago, resulting in the suspension of his driving privileges in another state for three years. At the time of the arrest, his home state driver's license was suspended for a 2006 DWI. It remains suspended until the end of June 2008. His pattern of consuming alcohol in each incident, viz., drinking excessively in commercial establishments and then driving, does call into question his judgment. AG ¶ 23(b) provides limited mitigation. Applicant acknowledged his immature behavior and indicated his intention never to drink and drive again. However, there is insufficient evidence, at this time, to establish an adequate pattern of sobriety or responsible drinking, also required under this mitigating condition. There is no evidence in the record to support the application of AG ¶ 23(c), or AG ¶ 23(d), which requires participation in a formalized treatment program.

### **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). They include the following:

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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, including Applicant's age, and candid testimony. Applicant is an intelligent and motivated 24-year-old man, who possesses great potential for success in his career and strong support from his employer. His academic and employment accomplishments to-date are impressive.

Applicant began consuming alcohol at the age of 17. He continued drinking during college and gradually increased his consumption in 2004 to 2005. He subsequently began to monitor the frequency of his drinking, but on numerous occasions engaged in binge drinking episodes. Two of those episodes led to criminal convictions for DWI charges within a seven-month period of time, one in November 2006 and another in June 2007. The second charge occurred while his resident state's driver's license was suspended and one month after his final court appearance on the first charge. At the time of this hearing, he is subject to two different sets of driving restrictions.

At this time, Applicant asserted that he is careful not to drink and drive. He expressed his commitment to his job and a change in his behavior. He informed his employer of the reasons underlying this hearing. All of these steps represent solid evidence of his decision to mature and continue pursuing a successful career. However, this change in attitude is recent and does not sufficiently mitigate the concerns raised by the Government, nor the fact that that he continues to occasionally binge drink to the point of intoxication, despite his history.

Although he was required to complete an alcohol class, Applicant has not yet done so, indicating that he may not appreciate the seriousness of the DWIs and the effect those convictions could have on his employment. While he appears very honest and dedicated to moving forward with his life, he has not established a satisfactory track record of exercising good judgment, substantiated by independent corroborating evidence, to persuade me that he has sufficiently matured and developed an understanding of the issues related to his pattern of binge drinking and the consequences it has had in his life.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his alcohol consumption.

### **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:  
Subparagraph 1.d:

Against Applicant  
Against Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge