



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-15188
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro Se*

April 6, 2009

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated the security concerns raised by his alcohol use. Eligibility for access to classified information is granted.

On October 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 on November 19, 2008, and requested a hearing before an administrative judge. The case was assigned to me on February 11, 2009. DOHA issued a notice of hearing on February 26, 2009, and the hearing was convened as scheduled on March 17, 2009. The Government offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified on his own behalf, called one

witness, and submitted Exhibit (AE) A, which was received without objection. DOHA received the transcript of the hearing (Tr.) on March 25, 2009.

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor. He has a General Educational Development (GED) high school equivalency certificate and attended trade school. He has been married for 18 years. He was previously married three times, twice to the same woman. He has three adult children from his earlier relationships and two children with his current wife.<sup>1</sup>

Applicant was having health issues in 2004. He drank beer every day after work. He smoked more than a pack of cigarettes a day since he was a teenager. His wife had brain surgery in about February 2004. He started drinking more to relieve the stress. He had gastroesophageal reflux disease (GERD) with severe nausea, high blood pressure, anxiety, and increased liver enzymes, which were related to his drinking. He lost weight. His doctor recommended that he stop drinking. She put him on a Valium detoxification as an outpatient to stop his drinking, but it was unsuccessful. Applicant did not like how the Valium made him feel. His doctor recommended that he undergo detoxification in a hospital. She told him that there could be health concerns if he attempted to stop drinking on his own. Applicant stated that she told him that he could “stroke out” and die if he stopped drinking without medical care. He was admitted to a hospital on May 11, 2004, pursuant to his doctor’s advice, for a three-day detoxification to help him quit drinking. This was not an alcohol rehabilitation center or program; he entered for a limited time and a limited purpose. Medical records indicated that he reported “daily alcohol use of 6-10 tallboys per day.” Another medical document reported “24+ tallboys.” Applicant testified that figure was not his daily consumption. It referred to how much he could possibly drink if he was camping or doing some other type of recreation. He admitted that the medical report was accurate in that he was drinking between six and ten beers a day at that time. He reported under pain/discomfort that he had “stomach pain; nausea; feeling of need to vomit,” and that he drank beer for the pain. He was diagnosed by a physician (M.D.) as alcohol dependent.<sup>2</sup>

Applicant discharged himself from the hospital on May 13, 2004. He did not like the hospital. He felt it was dirty, with a bad smell, and the patients were people with many problems. He equated it to a “homeless shelter.” The medical report indicated that he did not require detoxification during his stay at the hospital. Applicant was not interested in an outpatient or inpatient alcohol rehabilitation program or in attending Alcoholics Anonymous meetings. He believed that he could stop on his own. He stated that he did not drink for about four months. He then started drinking again out of boredom and to relax. He stated that he drank less than he did before, “I reprogrammed as that I’m getting older; just drink a few in the evening and call it after that.”<sup>3</sup>

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<sup>1</sup> Tr. at 30-32, 52-53; GE 1.

<sup>2</sup> Tr. at 21-28, 32-41; Applicant’s response to SOR; GE 2.

<sup>3</sup> Tr. at 23-27, 44-45; GE 2.

Applicant responded to DOHA interrogatories concerning his alcohol use on January 5, 2008. He indicated that he drank a six pack of beer a day, but he did not drink to the point of intoxication. He wrote that he drank beer to relax and that he “like[d] to drink a few beers in the evening to unwind.”<sup>4</sup>

Applicant was evaluated by his doctor on August 24, 2008, pursuant to a request by DOHA to follow-up on his previous evaluation of alcohol dependence. The doctor forwarded a letter and an evaluation to DOHA on September 8, 2008. The letter noted:

I had the opportunity to see [Applicant] recently. Paperwork from your office was reviewed, and a copy of the office visit is included. This is not a problem that I have discussed with the patient previously, so all information is from your letter and the office visit. From his history, it does sound like he has problems with alcohol dependence. He does have health issues that would certainly improve with discontinuation of alcohol completely. It sounds like he does use alcohol as a method to decrease stress and tension, so I have placed him on medication to help from the standpoint of relieving those issues. Since I last saw him, he has decreased his alcohol to two beers daily. He will see me again in the next couple of weeks for followup. With his current concerns related to his employment and health, hopefully this will give him added willpower to discontinue alcohol completely, which is what I have recommended to him. I believe that setting him up with a therapist who deals with alcohol dependence would be advantageous in the long term for helping him meet his goal.

The doctor did not diagnose Applicant with alcohol dependence. He made an assessment of “[h]istory of alcohol habituation.”<sup>5</sup>

Applicant questions the alcohol dependence diagnosis, and whether he is an alcoholic. Since 2005, he has deployed to Iraq or Kuwait five times for about three to six months each deployment. He does not drink while he is deployed and had no ill effect from going for extended periods without alcohol. He does not believe that he could do so if he was alcohol dependent. He does not have a criminal record and there is no evidence of any alcohol-related incidents. He denies that drinking has affected his employment.<sup>6</sup>

Applicant’s wife was asked if she believes he is an alcoholic. She does not believe he is an alcoholic, but would like him to stop because of his health issues. She stated that he will go several weeks where he drinks beer every evening, and then he

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<sup>4</sup> GE 4.

<sup>5</sup> Tr. at 45-51; Applicant’s response to SOR; GE 3.

<sup>6</sup> Tr. at 21, 25-31, 42, 54-56.

will go for periods where he does not drink at all. On weeknights, he will drink less than a six pack. On weekends, he may drink a little more than during the week, but not to the point of what she considers to be intoxication. In their 18 years of marriage she has never seen him drunk. She confirmed that he has not missed work because of his drinking.<sup>7</sup>

Applicant currently drinks between two to four beers each night after work. He drinks to relax and unwind after work. He worked construction for a large part of his life. It was normal to have a couple beers after a day of physical labor. He admitted that he will drink more than that on the weekends, if he is doing yard work, at a function, or camping.<sup>8</sup>

Applicant is highly regarded both professionally and personally. He submitted 11 character letters from people who have known or worked with him going back to his childhood, including the mother of one of his children and two former spouses. He is described as steadfast, honest, hardworking, dedicated, truthful, responsible, and trustworthy. He has received several Letters of Achievement from the military units he has supported. An Army sergeant first class, who deployed multiple times to Iraq, wrote that Applicant is technically proficient and extremely professional. He wrote that the equipment that Applicant serviced help save lives in Iraq, and that he was a huge asset to their unit. Applicant has been a regular volunteer and contributor to the American Legion, Veterans of Foreign Wars (VFW), Veterans Administration Hospital, the local homeless shelter, and other charities. He is recommended for a security clearance.<sup>9</sup>

## **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 to be used 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, administrative judges apply the guidelines 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.

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<sup>7</sup> Tr. at 57-60.

<sup>8</sup> Tr. at 20, 27-28, 38, 45.

<sup>9</sup> AE A.

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 the 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.

Section 7 of Executive Order 10865 provides that adverse 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 *a/so* 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 trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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;

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

(f) relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program.

Applicant was diagnosed by a physician of alcohol dependence. He drinks two to four beers each night after work and on occasions much more than that. The evidence is sufficient to raise AG ¶¶ 22(c) and (d) as disqualifying conditions. His short stay at the hospital does not constitute completion of an alcohol rehabilitation program. AG ¶ 22(f) is not applicable

Two Alcohol Consumption Mitigating Conditions under AG ¶ 23 are potentially applicable:

(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; and

(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).

Applicant does not have any alcohol-related arrests or alcohol-related incidents. His wife is concerned about his drinking because of his health. He is a hardworking man from a construction background who is used to drinking several beers after work to relax. What he does is perfectly legal. It has not affected his work or his relationships. He goes for months at a time without drinking while he is deployed. I find that his drinking occurs under circumstances that do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) is partially applicable.

Applicant was diagnosed as alcohol dependent in 2004. His doctor evaluated him in 2008, upon DOHA's request. He wrote after reviewing the documents provided by DOHA that "it does sound like he has problems with alcohol dependence." He did not diagnose Applicant as alcohol dependent, but he made an assessment of "[h]istory of alcohol habituation." Applicant has established a pattern of responsible use, but he is not completely abstinent. AG ¶ 23(b) is not applicable.

### **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 common sense 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. I have incorporated my comments under Guideline G in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is 45 years old. He is a hardworking man from a construction background who has grown accustomed to drinking beer after work. His drinking has affected his health and his wife would like him to quit because of that. He was diagnosed as alcohol dependent in 2004. His personal physician did not diagnose him as alcohol dependent in 2008, but noted that "it sound[s] like he has problems with alcohol dependence." There are no alcohol-related arrests or incidents. He is very highly regarded professionally and personally. He has deployed on five occasions to Iraq and Kuwait since 2005. The military has commended him and noted that his equipment has helped save lives. Even his two ex-wives and the mother of one of his children wrote letters on his behalf. His wife noted his beer drinking, but testified that she has not seen him drunk in 18 years. He has established a pattern of responsible use, but he is not completely abstinent. Clearly, Applicant would be better off if he completely quit drinking. However, he is indulging in a legal act. His drinking does not cast doubt on his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his alcohol use.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge