



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-16007
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

July 8, 2008

**Decision**

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MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on September 17, 2007. On February 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under drug involvement (Guideline H) and alcohol consumption (Guideline E). The action was taken pursuant to 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his answer to the SOR on February 29, 2008, and requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on April 8, 2008. Applicant received the FORM on April

21, 2008. His response was due May 21, 2008. No response was received by DOHA. The case file was assigned to me on June 24, 2008.

### **Findings of Fact**

The SOR contains one allegation under the drug involvement guideline that Applicant admitted. The alcohol consumption guideline contains three allegations. Applicant admitted subparagraphs SOR 2.a. and 2.b., but denied subparagraph 2.c. He did not provide reasons why he admitted subparagraphs 1.a., 2.a., and 2.b., and why he denied subparagraph 2c. Applicant is 24 years old and single. He has been employed as a financial analyst by a defense contractor since July 2007.

### **Drug Involvement**

During his interview in September 2007 with an investigator, Applicant discussed his drug and alcohol use. On December 21, 2007 (Item 4, answers to interrogatories), he officially answered questions about his drug and alcohol use. In addition, he adopted (acknowledged as correct the information he provided in the September 2007 interview) the information he provided to the investigator in his September 2007 interview concerning his drug and alcohol use was true. The frequency of his alcohol use and frequency of intoxication after December 2006 is more in his answers to interrogatories in December 2007 than in his interview in September 2007.

According to his September 2007 interview, Applicant began using marijuana in August/fall of 1999 in high school. He and a high school friend purchased approximately \$5.00 of marijuana from a friend. The two smoked a pipe's worth of marijuana, but the drug had no effect on Applicant. About two years later while working as a lifeguard at an apartment complex, Applicant and a friend smoked marijuana about once a week in June, July, and August 2001, by sharing a pipe to ingest the drug. The marijuana made Applicant feel euphoric and light-headed. He paid the friend between \$5.00 and \$10.00 to assist in purchasing the drug. His use of the drug stopped when he returned for his last year of high school in September 2001.

Applicant did not recall using marijuana until he started college in September 2002. He took a few puffs from a pipe at a party his first year of college. His next use of the drug was in September 2003 at his apartment.

The next time Applicant used marijuana was in March 2006, during a seven-day vacation with friends in the Carribean. He and his friends purchased between \$60.00 and \$100.00 for the drug. Applicant recalls smoking about once or twice a day during the seven-day trip. The marijuana he ingested on this trip seemed to be stronger than any other he had experienced to date. Applicant was 23 years old the next time he used marijuana in March 2007. His use in Europe occurred during a two-day visit to a city where marijuana use is legal. He purchased the drug for about \$5.00, and smoked it either in a pipe or in a cigarette. According to his answers to interrogatories in December 2007 (Item 4), Applicant has used no marijuana since March 2007. He never

considered drug use a principle part of his life. He never sold marijuana or any other kind of drug. He was never cited for a drug related offense, and never had a positive drug test.

### **Alcohol Consumption**

According to Applicant's September 2007 interview, he started drinking in 1998 when he was 15 years old. In his third and fourth years of high school, he drank more frequently, probably two or three weekends a month. On those occasions, he would consume about five or six beers or a similar number of mixed drinks. The level of consumption would make him intoxicated.

In the summer before college, he did not drink much at all. From August 2002 through December 2006, Applicant consumed between 3 beers and 10 beers, or a similar number of mixed drinks about three times a week. He drank to intoxication about once each weekend. In the summer months between school years, he drank on a weekend night, and he usually reached intoxication on this same night. Some summer weekends he did not drink at all.

After graduating from college (Item 4, September 2007 interview), Applicant drank one weekend night per month, and got intoxicated on that night also. According to the information he provided in his answers to interrogatories in December 2007. (Item 4), his drinking increased to every Friday and/or Saturday night. He became intoxicated several times a month.

According to his September 2007 interview, Applicant does not believe he is an alcoholic. He defines an alcoholic as one who cannot function without alcohol. Alcohol has never negatively impacted his finances or his occupational functioning. He never has been charged with an alcohol-related offense. He does not believe he was charged with an alcohol offense in the fall of 2004. (SOR 2.c.)

According to Item 4 (answers to interrogatories provided in December 21, 2007), Applicant last consumed alcohol about six days before he provided the responses to the interrogatories on December 21, 2007. The last time he was intoxicated was on November 21, 2007. Alcohol use puts Applicant in a good mood, while making him relaxed. He intends to drink alcohol in the future. He has never been treated for his alcohol use.

### **Character Evidence**

Applicant graduated from college in December 2006 with a Bachelor's degree. He provided no independent evidence substantiating his assertion that he stopped using marijuana in March 2007.

## **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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

## **Drug Involvement (DI)**

Using drugs brings the user's trustworthiness into question while casting a pall over his ability to comply with the law.

## **Alcohol Consumption (AC)**

Alcohol consumption may impair a person's judgment and lead to security violations.

### **Analysis**

## **Drug Involvement (DI)**

24. *The Concern.* "Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability for willingness to comply with laws, rules, and regulations."

Applicant's sporadic use of marijuana on approximately 20 occasions between 1999 and March 2007 activates DI disqualifying condition (DC) 25.a. (*any drug abuse*) While his March 2007 use evokes some residual security concerns because of its recency, the period of use that is most troubling is the seven-day abuse in March 2006, when he was using marijuana once or twice a day.

The DI guideline contains two mitigating conditions (MC) that may mitigate the circumstances of this case. The recency of his drug use over the last two years renders the first element of DI MC 26.a. (*the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgement*) inapplicable. However, Applicant receives significant benefit from the second clause of DI MC 26.a., because his drug use has been infrequent since September 2003.

Even though Applicant does not meet all elements of DI MC 26.b. (*a demonstrated intent not to abuse drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; a signed written statement of intent with automatic revocation of clearance for any violation*), I am convinced that he has undergone a maturation process that has motivated him to move on with his life. The DI guideline is resolved in Applicant's favor.

## **Alcohol Consumption (AC)**

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."

Although Applicant started using alcohol in 1998 when he was 15 years old, his alcohol consumption did not really become significant until he was in college. Applicant's consumption at the levels disclosed demonstrates conduct that falls within AC DC 21.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*) From August 2002 to December 2006, Applicant consumed sufficient amounts of alcohol (up to ten beers or a similar number of mixed drinks) three times a month to become intoxicated on each occasion. Though he reduced his drinking to one weekend night (usually drinking to intoxication on that weekend night) in the summer months while he was away from school, his binge drinking practice continued whether he was in school or on summer break.

Since his graduation from college in December 2006, Applicant claims (according to his September 2007 interview that he acknowledged as true in the last page of Item 4) he was drinking only one weekend night a month. Based on his drinking pattern while in college, it is reasonable to infer he was still consuming a binge level of beer or alcohol during that weekend night. However, according to his answers to interrogatories provided in December 2007 (Item 4), since December 2006, his drinking increased to one or two times a week, and he drank to intoxication several times a month. The last time he drank alcohol was about a week before his interview with an investigator, and the last time he was intoxicated was about a month before he was interviewed on December 21, 2007.

AC MC 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*) is not applicable as Applicant continues to drink alcohol at binge levels, and appears to have resumed his consumption to the levels similar to his college days. With no independent evidence from his supervisors, friends, or family to support Applicant's claims regarding the nature, scope, and pattern of his alcohol use, I am unable to find AC MC 23.a. or the AC guideline, in Applicant's favor.

AC MC 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*) is not applicable either. Even though Applicant was in college between 2002 and December 2006, drinking up to 10 beers or mixed drinks three times a month constitutes alcohol consumption at an abusive level because it often leads to poor judgment. Given the four-year period of alcohol abuse, an applicant is responsible under AC MC 23.b. to present evidence that demonstrates he understands his alcohol abuse issues, and he has taken action to overcome the problem. Whether an applicant drinks intoxicating levels of alcohol once a month, or three times a month, or several times a month, when he is intoxicated, he is not in a position to exercise the judgment necessary for safeguarding classified information and/or complying with security regulations. Given his failure to provide independent evidence to support his position that he does not have an alcohol problem, Applicant has not mitigated the AC guideline.<sup>1</sup>

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<sup>1</sup> Subparagraph 2.c. is found in Applicant's favor. The government presented no evidence to support this allegation. Applicant does not recall being cited for any offense in January 2005.

## **Whole Person Concept (WPC)**

The AG indicates 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 whole person concept. The WPC is made of nine general policy factors:

(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 the participation is voluntary; (6) the presence or absence of rehabilitation and other 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.

Factor 6 (the presence or absence of rehabilitation and other behavior changes) and Factor 9 (the likelihood of continuation or recurrence) are critical factors in this case. Applicant presented no independent evidence which shows rehabilitation or behavioral changes in his conduct that facilitates abstinence or control over his consumption of alcohol. Applicant has not satisfied his burden of persuasion under the AC guideline.

### **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 (Drug Involvement, Guideline H):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Paragraph 2 (Alcohol Consumption, Guideline G):	AGAINST APPLICANT
Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against Applicant
Subparagraph 2.c.	For Applicant

## **Conclusion**

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

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Paul J. Mason  
Administrative Judge