



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-17668
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Kenneth M. Roberts, Esquire

September 15, 2008

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**Decision**  
\_\_\_\_\_

MOGUL, Martin H., Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on August 28, 2006. On April 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G for Applicant. 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 replied to the SOR (RSOR) in writing on May 1, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on July 2, 2008. DOHA issued a notice of hearing on July 16, 2008, and I convened the hearing as scheduled on August 19, 2008, in Reno, Nevada. The Government offered Exhibits 1 through 12, which were received without objection. Applicant testified on her own behalf and had four other witnesses testify for her. She submitted Exhibits A through S, which wee also admitted into evidence without objection. DOHA received the transcript of the hearing (Tr) on September 3, 2008.

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

### **Findings of Fact**

In her RSOR, Applicant admitted all of the SOR allegations 1.a., through 1.i., under Guideline G. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant and the additional witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 36 years old. She is unmarried and has two children. She received a Bachelor of Arts Degree in education in 1995.

Applicant is employed as a Human Resource representative/general by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

The Government alleges that Applicant is ineligible for clearance because she has engaged in excessive alcohol consumption. The following are the allegations as they are cited in the SOR, and to which, as stated above, Applicant admitted:

1.a. The SOR alleges that Applicant has consumed alcohol, at times to excess and to the point of intoxication, from approximately 1988 to at least October 2007.

1.b. In 1992, Applicant was arrested and charged with (1) Failure to Drive within a Single Traffic Lane, (2) Driving without an operators license, and (3) Driving While Intoxicated (DWI), first offense. She plead guilty to counts (1) and (2), and she was sentenced to serve two years probation. On this occasion she made the poor choice to go out of her dorm and drive in her vehicle, after she has been consuming alcohol.

1.c. In 1994, Applicant was arrested and charged with Assault on an Officer. Applicant had consumed alcohol prior to the incident. Applicant testified that this incident occurred when a friend got into an altercation with a police officer in a parking lot. When the officer attempted to hold her friend, Applicant came to her aid and "shoved" the officer.

1.d. In 1995, Applicant was arrested and charged with (1) Exceeding the Speed Limit, and (2) Driving a Motor Vehicle While Intoxicated (DWI), second offense. She plead guilty to excessive Blood Alcohol Content (BAC)-Prior Offense. Applicant was sentenced to four months incarceration, suspended, two years supervised probation, community service, and shock detention for 15 days.

1.e. In June 1995, Applicant received alcohol related counseling from a court ordered service.

1.f. In 1994, Applicant was arrested and charged with Destruction or Injury to Property. Applicant plead guilty and she was sentenced to 30 days, suspended on the condition that she pay restitution. Applicant had consumed alcohol prior to this incident. Applicant testified that on this incident she was intoxicated, and as she was walking she became physically cold. She struck the window of a bank building, because she wanted to warm up in the building. She entered the building and passed out, and that is where the police found her.

1.g. In 1997, Applicant received out-patient alcohol abuse counseling from an abuse center. Applicant testified that this consisted of meeting a counselor two times a week for two or four weeks. She entered this counseling at her own discretion, because she was concerned about her alcohol history.

1.h. In February 2004, Applicant was evaluated at an alcohol therapy center. Applicant received the diagnostic impressions of prior alcohol abuse by record of arrest and reported history. Applicant testified that this evaluation was done as part of the process of applying for a security clearance.

1.i. On July 11, 2006, Applicant was arrested and charged with (1) Speeding, (2) Disobedience to Stop Signs, and (3) Driving Under the Influence of Alcohol (DUI). She plead guilty to Count (3), and she was fined, assigned to attend DUI school, and ordered to perform community service.

Applicant testified that all of the alcohol related incidents, with the exception of the DUI in 2006, which is 1.i., above, occurred when she was a college student and living away from her hometown. After Applicant graduated college, and when her daughter was born in 1998, she returned to live in the same town that she has since she was in the second grade, with her mother, father, aunt and now her two children. She testified that after her daughter was born, she knew she had to make some changes in her life and become more responsible.

After 1998, Applicant had no more alcohol related incidence until her DUI arrest in 2006. She testified that this incident occurred after she had attended a company function, at which all the other witnesses, who testified at the hearing, also attended. After the company function ended, she stayed on the premises to socialize with non business friends. She estimated that she was at the sight from approximately 6:30 P.M. to 10:30 or 11:30 P.M. She estimated that she had eight drinks over the approximate four hour period. When she left she planned to drive home, thinking she did not have too far to go.

After the 2006 DUI arrest, Applicant estimated that she stopped drinking alcohol for four or five months, but then she began consuming alcohol again, although by her estimate it was minimally. A few months prior to the hearing, Applicant made the decision to abstain completely from alcohol. She testified credibly that "alcohol is no longer a part of my life since five months ago." She still attends dinners and social events, and she has found it is not something that she has to have. She also works with youth in her town, and she feel that she can set a better example if she abstains completely.

Exhibit E consists of a Mental Health and Substance Abuse Evaluation, dated August 18, 2008, by the same psychologist who performed the evaluation in 2004, that is discussed in 1.h., above. The doctor's diagnosis of Applicant is Alcohol Abuse-in Remission. He further states that Applicant "is motivated to prevent further complications resulting from alcohol consumption . . . She says she has now stopped drinking alcohol entirely. I believe further intervention is not necessary at this time, however it would be advisable for her to carefully self-monitor her actions and consult with a treatment professional if she strays at all from her plan."

As stated above, four witnesses testified on Applicant's behalf. The first witness to testify on Applicant's behalf was the current Facility Security Officer (FSO) for the company that employs Applicant. They have known each other since 2000, and since 2005 they have worked together. They also socialize together. The witness testified that Applicant works as her assistant and she has great confidence in her ability, and has never seen Applicant do anything to question that confidence. She also verified that Applicant told her that her intention was to abstain from all alcohol consumption in the future, and since then she has not seen Applicant consume any alcohol.

The second witness was the west coast director for Applicant's employer. He has known her since 2000. He testified that he has absolute trust in Applicant, and he would not have been as successful if it were not for her. He testified that he has never witnessed any problem for Applicant at work because of alcohol consumption.

The third witness is the wife of the second witness. She has known the Applicant as a friend. She described Applicant as a very responsible parent and person in general. She stated that Applicant was a great person and a good friend.

The fourth and final witness is a retired Marine Major General, who is now a vice president for Applicant's employer. He has known Applicant since 2005, when he hired her. He testified that he "trusts her implicitly, her judgement and her integrity. I've never had any problem with her in any shape or fashion, but certainly never a security involvement." He also testified that he has never known her to drink to excess, and in his last few visits with Applicant, he did not see her consuming any alcohol. Finally, he stated that in the last few years Applicant has "demonstrated on a daily basis her honesty, her integrity, her loyalty, and certainly her judgement," and he believed that the 2006 DUI was a "one time occurrence."

In addition to the four witnesses who testified on Applicant's behalf, she submitted 11 letters of recommendation (Exhibits G through Q). Four of the letters were from the witnesses who testified, and basically they reiterated their support for her. However, the other seven letters included individuals who have known Applicant as an acquaintance for many years. They all describe her in extremely positive terms as a "considerate, reliable and trustworthy person," with "good character."

Applicant was part of a group that started a scholarship program to give \$500 to young women who play softball to help them with their education. Exhibit R includes letters from two young women, thanking Applicant after they received these scholarships.

## 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©, 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.

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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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 ¶ 22 describes disqualifying conditions (DC) that could raise a security concern. Because of Applicant’s history of excessive alcohol use, including three arrests for DWI or DUI and her additional alcohol related incidents, the following DC apply to 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; (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.

AG ¶ 23 provides mitigating conditions (MC) that also apply to this case:

(b) the individual acknowledges 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 acknowledge her previous serious alcohol problems from 1992 to 1997. She seemed to resolve her alcohol issues and had no further alcohol incidents until 2006. The 2006 DUI is a concern, because it is recent and it shows poor judgement. Applicant’s alcohol consumption was minimal after her 2006 DUI arrest, and she has testified credibly that her intention for the last few months and the future is to abstain completely from alcohol consumption. Based on her own credible and sincere testimony, the very positive testimony of the other four witnesses, and the letters of recommendation, I conclude that Applicant has overcome her alcohol problems and will be able to abstain from alcohol in the future.

### 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) 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 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. Based on all of the factors discussed above, including but not limited to: Applicant’s maturity and expressed remorse at her previous alcohol related incidents, her current abstinence, and the extremely positive character testimony about Applicant from very impressive witnesses, I find that Applicant has greatly improved her situation regarding alcohol consumption, and she is a responsible person, who will continue to control her alcohol issues.

### **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 J:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant

### **Conclusion**

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

Martin H. Mogul  
Administrative Judge