



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-02912
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. Delaney, Esq., Department Counsel  
For Applicant: *Pro Se*

September 30, 2008

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**Decision**  
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LAZZARO, Henry, Administrative Judge

Applicant is a 24-year-old man who was charged with and/or convicted of five alcohol-related offenses between August 2002 and March 2008. He has failed to mitigate the security concern caused by his alcohol consumption.

On May 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges a security concern under Guideline G (alcohol consumption). Applicant's response to the SOR was received by DOHA on June 23, 2008. Applicant admitted all SOR allegations and requested a hearing.

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on August 12, 2008. A notice of hearing was issued on August 20, 2008, scheduling the hearing for September 5, 2008.<sup>2</sup> The hearing was conducted as scheduled. The government submitted two documentary exhibits that were marked as Government Exhibits (GE) 1-2. GE 1 was admitted into the record without objection. Applicant's objection to admission of the partial Report of Investigation (ROI) contained in GE 2 was sustained. The remainder of GE 2 was admitted into the record without objection. Applicant testified but did not submit any documentary exhibits. The transcript was received on September 18, 2008.

### **Procedural Issues**

Department Counsel moved at the hearing to amend the SOR by changing the name of the city listed in subparagraphs 1.b and 1.c to conform to the evidence. Each amendment was made on the face of the SOR without objection.

### **Findings of Fact**

After a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 24-year-old single man who has been employed as an electrical engineer by a defense contractor since January 2007. He worked as an intern for this same defense during the summer of 2006. Applicant graduated from college in December 2006, and was awarded a bachelor of science degree in electrical engineering.

Applicant was convicted of Possession/Consumption of Alcohol Under the Legal Age in August 2002 and again in May 2003. He was fined on both occasions. Applicant was a college student when these offenses occurred.

In August 2007, following his graduation from college and while he was employed by the defense contractor, Applicant was charged with public intoxication. In this incident, he was arrested, handcuffed, booked into a jail and held in a cell overnight. He was convicted and fined \$135.

In November 2007, Applicant was charged with Operating a Vehicle While Impaired (OWI). His blood alcohol content (BAC) was 0.17. Applicant was again booked into a jail and held overnight. He was convicted of this offense in February 2008, and sentenced to serve two days in jail (suspended), fined \$1,250, and had his driving privileges revoked for 30 days and an ignition interlock system installed in his car for six months. He was also ordered to attend a session wherein he was required to remain incarcerated in a hotel for two days while attending alcohol awareness classes.

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<sup>2</sup> Applicant was notified of the hearing date by Department Counsel on August 13, 2008. He agreed at that time to the hearing date of September 5, 2008, and waived on the record any objection he might have in the event he did not timely receive the formal notice of hearing. (Tr. pp. 17-19)

Applicant obtained an alcohol evaluation following the OWI arrest. The certified alcohol and drug counselor (CADC) from a court recognized alcohol program indicated Applicant met the DSM IV criteria for alcohol “abuse.” (GE 2) Her recommendations were as follows:

(Applicant) tested High Probability of having a Substance Dependence Disorder on the SASSI, did not meet the criteria for Dependence on the DSM-IV, and did not meet the criteria for Substance Abuse Treatment on the ASAM, the Client Assessment Form, and through the interview I conducted this date. Therefore No Treatment is being recommended at this time. If there are any further substance related problems (this includes positive urinalysis) there would be a need for another screening to determine what treatment options would be considered at that time. (GE 2)

On March 8, 2008, Applicant was charged with Public Intoxication while in a state other than where he resides. He testified he had only consumed a few beers, but admitted he was found by the police passed out on a public way. He suggested, without any supporting evidence, that he was unwittingly drugged by a bartender. He received some sort of deferred adjudication for this offense within the past few months.

Applicant began consuming alcohol on weekends while he was in high school. He admits he occasionally became intoxicated during this time. While in college, he consumed beer on almost every Friday and Saturday night and became intoxicated on most weekends. In April 2008, in response to interrogatories propounded to him by DOHA, Applicant stated he consumes about 10 drinks per week. He testified he now only drinks two to three beers a week. At the hearing, in response to a question from Department Counsel inquiring if he had become intoxicated at any time following his March 2008 arrest, Applicant testified:

Not intoxicated to the point that I was being irresponsible, just slightly, you know a couple of beers. If you're going by the law, .08, yes; intoxicated to the point where I was being irresponsible, no. (Tr. pp. 55-56)

Applicant has not received any alcohol treatment. He intends to continue consuming alcohol.

## **POLICIES**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup>

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## Analysis

### Guideline G, 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. (Adjudicative Guideline [AG] ¶ 21)

Applicant has been charged with and/or convicted of alcohol-related offenses on five occasions since 2002. His most recent offense occurred in March 2008, less than one month after he was convicted of OWI and required to attend alcohol awareness classes while being detained in a hotel. He has been diagnosed as alcohol abusive by a CADC.

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

He has not received any alcohol treatment. He admits he has consumed alcohol to excess since his last arrest and has expressed an intent to consume alcohol in the future.

Disqualifying Conditions (DC): 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*; DC 22(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*; DC 22(e): *evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program* all apply.

Despite his many alcohol-related arrests, including three within a very recent seven-month period, Applicant fails to accept that he may have a serious alcohol problem and has espoused his intent to continue consuming alcohol. His most recent arrest occurred a mere six months ago and he admits to drinking to excess since then. Mitigating Conditions (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*; and 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)* do not apply.

In November 2007, the CADC wrote there would be need for another screening to determine what treatment options should be considered for Applicant. He was arrested four months later, after being found passed out on a public way, but has not sought another evaluation or entered into any treatment program. Thus, MC 23(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 meeting 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* does not apply. The remaining mitigating condition has no applicability to the facts of this case.

The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Further, it must once again be noted that any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.

Accordingly, and considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the security concern caused by his alcohol consumption. He has failed to overcome the case against him in this regard or satisfy his ultimate burden of persuasion. Guideline G is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **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

Subparagraphs 1.a-h:               Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

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Henry Lazzaro  
Administrative Judge

