



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-04615
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

June 25, 2010  

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**Decision**  

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Alcohol Consumption and Personal Conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (Alcohol Consumption) and E (Personal Conduct). The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG).

Applicant answered the SOR on March 25, 2010, and requested a hearing before an administrative judge. His answer also stated that if certain items “can be verified by forwarding me the details for verification a hearing would not be required.” After receiving copies of the documents the Government planned to introduce into evidence,

Applicant changed his request and elected to have the case decided on the written record in lieu of a hearing. Department Counsel exercised the Government's right to request a hearing before an administrative judge. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. The case was assigned to me on May 11, 2010. DOHA issued a notice of hearing on May 18, 2010, and the hearing was convened as scheduled on June 9, 2010. DOHA received the transcript of the hearing (Tr.) on June 17, 2010.

## **Procedural and Evidentiary Rulings**

### **Evidence**

The Government offered Exhibits (GE) 1 through 14, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through C, which were admitted without objection.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice that "generally persons hold[ing] a security clearance are obligated to self-report." He stated it was required under the National Industrial Security Program Operating Manual (NISPOM). I held the record open until June 18, 2010, for Department Counsel to submit a written request for administrative notice with a copy of the appropriate provision of the NISPOM. Applicant would have seven days after he received Department Counsel's submission to file any objections. Department Counsel did not submit anything by the deadline. On June 21, 2010, he orally informed me, that he was not submitting anything. Absent a written request with supporting documentation, Department Counsel's request for administrative notice is denied.

### **Amendment of SOR**

On my own motion and without objection from either party, I amended the SOR by adding an allegation under Guideline E, as follows:

2.i. In a statement provided to an investigator from the Office of Personnel Management on November 7, 2008, you intentionally provided false information when you stated that you "stopped drinking completely after the second DUI."

Applicant admitted to the amended allegation. I offered Applicant a continuance and the opportunity to submit documentary evidence after the hearing. He declined both options and elected to proceed.<sup>1</sup>

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<sup>1</sup> Tr. at 50-52, 61-62.

## Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He is seeking to retain his security clearance that he has held since the 1990s. He served in the U.S. Navy from 1979 until he was honorably discharged as a seaman apprentice (E-2) in 1985. He has a Bachelor of Science degree. He married in 1983. He has three children, ages 30, 22, and 20.<sup>2</sup>

Applicant used illegal drugs before and during his time in the Navy. He tested positive on at least one drug test and he was punished under the Uniform Code of Military Justice (UCMJ). He stated that he has not used illegal drugs since 1985. Applicant submitted a Personnel Security Questionnaire in October 1985. He intentionally failed to list his illegal drug use and his punishment under the UCMJ. Applicant's security clearance was denied in 1987 because of his falsification of the Personnel Security Questionnaire.<sup>3</sup>

In October 2001, Applicant was driving home from a competition that his daughter was involved in, and he stopped and bought beer. He was drinking the beer as he was driving home. He stopped to relieve himself when a police officer saw him. He was arrested and charged with driving under the influence of alcohol (DUI) and driving with a blood alcohol concentration (BAC) of .08% or more. His BAC was reported at .12%. He pled *nolo contendere* and was found guilty of the second count. The DUI count was dismissed. He was sentenced to three days in jail less two days credit for time served; \$390 fine plus penalties, restitution, and fees; summary probation for 36 months; and ordered to complete a three-month alcohol program. Applicant was permitted to serve one day in the morgue in lieu of jail. Applicant completed the terms of his probation.<sup>4</sup>

Applicant reported his DUI arrest to his company's security officer. He submitted a security clearance application (SF 86) in January 2002. He reported his 2001 DUI, his military adjudications, and the denial of his security clearance in 1987.<sup>5</sup>

Applicant and his daughter had an argument in September 2005. He left the house and bought beer, which he drank. He also purchased a 32-ounce cup of Diet Coke and a bottle of Jack Daniels. He mixed some of the Jack Daniels into the Diet Coke and drank that. He then was driving on the freeway at a high speed when he hit the back of a trailer being pulled by a truck. The driver of the truck was able to get the truck under control, but it went into the dirt divider and almost overturned. There was significant damage to the trailer, personal watercraft on the trailer, and the truck. Applicant did not have insurance at the time. He continued to drive and exited the

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<sup>2</sup> Tr. at 24, 60-61, 75; Applicant's response to SOR; GE 3, 12.

<sup>3</sup> Tr. at 23-28; Applicant's response to SOR; GE 1, 2, 4, 7, 12, 14.

<sup>4</sup> Applicant's response to SOR; GE 3, 5-7, 12, 14.

<sup>5</sup> Tr. at 63; GE 2.

freeway, but he was followed by several cars. When he stopped, one of the other drivers pulled up next to him and told him that she was calling the police and he needed to return to the scene of the accident. He left, returned to the freeway, going the opposite way, and threw the bag with the Jack Daniels out the window. Another car continued to follow him until he left the freeway and stopped. The police arrived a short time later. Applicant had a “blackout” and does not remember everything that occurred.<sup>6</sup>

Applicant was arrested and charged with DUI; driving with a BAC of .08% or more; hit and run; and reckless driving. His BAC was tested at .22%. In April 2006, he pled *nolo contendere* and was found guilty of driving with a BAC of .08% or more and reckless driving. The remaining charges were dismissed. He was sentenced to ten days in jail less eight days credit for time served; \$500 fine plus penalties and fees; \$5,155 restitution; summary probation for 60 months; ordered to complete a 30-month multiple offender alcohol program; and 120 hours of community service. The remaining counts were dismissed. He completed “18 months of 30 months” of his multiple offender alcohol program.<sup>7</sup>

Applicant did not report his DUI/hit and run arrest to his company’s security officer. The company discovered the arrest in March 2006 when a third party informed the company of Applicant’s arrest. Applicant testified that he was unaware of any obligation to report the arrest.<sup>8</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2006. Under the pertinent police record questions, he listed that he had a court-martial for marijuana, but incorrectly listed that it occurred in 1993. He listed his 2001 arrest for DUI, but listed that it occurred in 2002. He listed his 2005 arrest. He wrote the offense was “DUI” and the action taken was “Fine/Jail/Class.” He did not specifically list that he was also charged with hit and run. He denied intentionally falsifying the SF 86 by failing to list that he was also charged with hit and run.<sup>9</sup> After considering all the evidence, I find that Applicant did not intentionally falsify this SF 86.

Applicant was interviewed on several occasions about his arrest and alcohol consumption. He provided inconsistent information about his drinking. At one point he denied having blackouts, which is inconsistent with his admission that he had a blackout during his 2005 arrest.<sup>10</sup>

Applicant provided a signed statement to an investigator from the Office of Personnel Management in November 2008. He wrote in the statement that he had a

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<sup>6</sup> Applicant’s response to SOR; GE 8, 12, 14.

<sup>7</sup> Tr. at 22; Applicant’s response to SOR; GE 8-10, 12, 14; AE A, B.

<sup>8</sup> Tr. at 63-64; Applicant’s response to SOR; GE 11.

<sup>9</sup> Tr. at 32; Applicant’s response to SOR; GE 3.

<sup>10</sup> Applicant’s response to SOR; GE 12-14.

blackout during the 2005 arrest and did not remember all the details. He wrote: “I stopped drinking completely after my second DUI. My future intent is to not drink and I have no desire to drink now.” Those statements were incorrect because Applicant continued to drink alcohol after the second DUI. He testified that his longest period without a drink during that period was three weeks to a month.<sup>11</sup> I find that Applicant intentionally provided false information in this statement.

Applicant was interviewed at least once in June 2009 by a different OPM investigator than the investigator who took the 2008 written statement. He continued to state that he had remained sober.<sup>12</sup>

Applicant prepared a five-page statement on about June 24, 2009. The statement was to be given to the OPM investigator to correct some of his misrepresentations about his alcohol use. He wrote:

It is with deep sadness that I must acknowledge that I still drink alcohol on occasion. This deep sadness is because I did lie to the previous investigators and planned on lying to Agent [C]. . . . I have no deep sadness that I enjoy an occasional beer. This statement has been written as an omission of the fact that I still drink alcohol on an occasional basis only.<sup>13</sup>

He wrote that he started drinking casually in September 2007. He further wrote:

Since that time my consumption has been predominantly on weekends, never do I drink during the week. It should be understood the “weekend” drinking does not occur every weekend, nor do I always drink just beer, on occasion I will have one/two drinks of hard alcohol, this var[ies] so it is difficult to be specific as to type. As for beer, I enjoy the taste of Budweiser light.

\* \* \*

I am guilty of lying to the previous investigators and lying to Agent [C] concerning my consumption of alcohol. My reasoning or rational[e] was the constant probing concerning quantities, specific dates, specific people, and even emotional state. The probing for details caused me to ramble; in so doing I forgot what detail was missing or what I needed to mention. Let this statement of omission and my desire to be truthful with the federal government be the last time I need to explain my liking the taste of beer.<sup>14</sup>

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<sup>11</sup> Tr. at 45-49; Applicant’s response to SOR; GE 12.

<sup>12</sup> GE 13.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Applicant was interviewed by an OPM investigator on July 7, 2009, and provided a sworn statement. He did not give the investigator the above statement. Instead, he signed a new statement which once again contained intentionally false information about his alcohol use.<sup>15</sup> He wrote:

I don't know why I gave different answers creating inconsistencies in my testimonies. The truth is I drank alcohol from age 14 or 15 up until approximately 1987. I stopped consuming alcohol in 1987 up until 1997. I was prompted by my wife to stop drinking for ten years. My six year old daughter at the time was programmed to get her father a beer. I started drinking again in 1997 up until my Oct 01 DUI. I was drinking beer casually but I cannot quantify the amount I consumed or the frequency in which it was consumed. I do not want to contradict myself again by providing a numerical amount. I maintained sobriety until my second DUI in Sep 05. As stated in previous testimonies, I have no intentions of future alcohol use. I have not consumed alcohol since my second DUI in Sep 05, although I have been tempted.<sup>16</sup>

After he signed the above false statement, Applicant gave the investigator the statement he wrote in June 2009. His testimony about his current alcohol use is consistent with the June 2009 statement.<sup>17</sup> I did not find Applicant to be a credible witness and I question the truth of his testimony and the above statement.

Applicant submitted several letters attesting to his job performance, character, integrity, and ethics. The authors recommend him for a security clearance.<sup>18</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 overarching 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

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<sup>15</sup> Tr. at 52-58; Applicant's response to SOR; GE 13, 14.

<sup>16</sup> GE 14.

<sup>17</sup> Tr. at 38-40, 45-46, 52-59; Applicant's response to SOR; GE .

<sup>18</sup> AE C.

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.

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

## **Analysis**

### **Guideline G, Alcohol Consumption**

The security concern for Alcohol Consumption is set out in AG ¶ 21, as follows:

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:

(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 abuser or alcohol dependent.

Applicant has two alcohol-related convictions. He admitted to excessive drinking including blackouts. AG ¶¶ 22(a) and (c) are applicable.

Three 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;

(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); 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.

Applicant's last alcohol-related arrest was in 2005. He has completed several court-ordered alcohol programs. He continues to drink alcohol, but indicated that he no longer drinks and drives and he only drinks in moderation. There is no favorable prognosis by a duly qualified medical professional or a licensed clinical social worker. Based upon Applicant's extensive history of substance abuse and failure to be truthful about his alcohol use, there is insufficient evidence for a finding that Applicant has his alcohol use under control. None of the mitigating conditions are applicable.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful



and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant intentionally falsified a Personnel Security Questionnaire in 1985. He intentionally provided false information about his alcohol use to background investigators in 2008 and 2009. AG ¶¶ 16(a) and 16(b) are applicable.

SOR ¶ 2.d alleges that Applicant was denied a security clearance in 1987 because of the falsification of his Personnel Security Questionnaire. The Personal Conduct concerns raised by the falsification of his Personnel Security Questionnaire are already alleged. SOR ¶ 2.d does not allege distinctive conduct by Applicant. It alleges the action of the Government in response to Personal Conduct already alleged. SOR ¶ 2.d is concluded for Applicant.

SOR ¶ 2.e alleges that Applicant failed to report his 2005 arrest to the appropriate personnel at his place of employment. There was no evidence submitted that Applicant was required to report his arrest. SOR ¶ 2.e is concluded for Applicant.

Applicant did not intentionally falsify his 2006 Questionnaire for National Security Positions. SOR ¶ 2.f is concluded for Applicant.

There is insufficient information to raise the factual basis for the conduct alleged in SOR ¶ 2.g. That allegation is concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made

aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant falsified a Personnel Security Questionnaire in 1985. He was denied a security clearance in 1987 because of that falsification. Some years later, he reapplied, revealed his drug and criminal history, and was granted a clearance. That falsification happened 25 years ago and was mitigated when he obtained a security clearance after revealing the truth. While he was eventually granted a clearance, the denial clearly put Applicant on notice that he was required to be completely truthful about all security matters. He was not. He was untruthful in at least two different interviews. He submitted a correction on the same day as his last false statement. That correction provides some mitigation under AG ¶ 17(a). However, I have lingering doubts about the complete veracity of the corrected statement and his testimony.

### **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 relevant 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 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. I have incorporated my comments under Guidelines G and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has a long history of substance abuse and dishonesty. He falsified a Personnel Security Questionnaire in 1985 after his discharge from the Navy. He was aware of the importance of complete candor in security matters because he was denied a security clearance in 1987 based upon the falsification of the questionnaire. He has two alcohol-related convictions. The second occurred not long after he completed probation for the first offense. It appears he is still on probation. He was untruthful on several occasions about his current alcohol consumption. I did not find him to be a credible witness and have doubts as to the truthfulness of his testimony. I have significant unresolved concerns about his honesty, judgment, trustworthiness, and alcohol issues.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Alcohol Consumption and Personal Conduct security concerns.

### **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-1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.g:	For Applicant
Subparagraph 2.h-2.i:	Against Applicant

## **Conclusion**

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

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Edward W. Loughran  
Administrative Judge