



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-04887
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

May 21, 2010

**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by his alcohol consumption, but failed to mitigate the security concerns generated by his criminal conduct, personal conduct, and troubled finances. Clearance denied.

**Statement of the Case**

On August 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, Criminal Conduct, G, Alcohol Consumption, F, Financial Considerations, and E, Personal Conduct. 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 adjudicative guidelines (AG).

Applicant answered the SOR on September 3, 2009, admitting all allegations except SOR Paragraph 4. On October 29, 2009, the case was assigned to another administrative judge who scheduled the hearing for December 11, 2009. On December 3, 2009, the hearing was continued. On December 15, 2009, the case was reassigned to me. On January 13, 2010, a notice of hearing was issued scheduling the case for February 4, 2010. At the hearing, I received 20 government exhibits, 15 Applicant exhibits and Applicant's testimony. The transcript was received on February 25, 2010.

### **Findings of Fact**

Applicant is a 48-year-old single man with one child, age 20. He was previously married from 1986 to 1996. The marriage ended in divorce. Applicant graduated from college in 1984 with a double major in Economics and Business Administration. (Tr. 55)

For the past two-and-a-half years, Applicant has worked for a defense contractor as a software tester. His duties include maintaining the media library used for data processing applications, and evaluating system test results for the purposes of identifying defects. (AE I) According to a senior-level manager, Applicant is "the go-to guy when the team needs a dependable and trustworthy person to get the job done." (GE A) His immediate supervisor characterized him as exceptionally dedicated to the job, honest, and trustworthy. (AE C)

In September 2000, Applicant was arrested and charged with driving under the influence (DUI) of alcohol. Subsequently, he was fined. (GE 1)

Two months later, in December 2000, Applicant was again arrested and charged with DUI after the police stopped him driving down a one-way street. His blood/alcohol content at the time of the arrest was .394. (GE 2 at 9) He was fined and ordered to attend inpatient treatment. (GE 2) The record contains no evidence of whether he attended the inpatient treatment, as ordered.

In February 2001, Applicant was arrested and charged with contempt of court for failing to appear in court on a charge for inattention to driving. (GE 3 at 2) He was fined and sentenced to community service.

On the morning of February 21, 2001, the police stopped Applicant after observing that his car did not have any license tags. Because of the heavy odor of alcohol emanating from Applicant's car, the officer administered a field sobriety test. Applicant failed, and was charged with DUI, driving without license tags, and driving on a suspended license. (GE 16 at 4) Subsequently, he was fined.

In April 2001, Applicant was arrested and charged with theft after the proprietor of a convenience store caught him stealing groceries and vodka. (GE 16 at 4; Tr. 44) Applicant was homeless at the time. (GE 16 at 5) He was sentenced to a fine and ordered to perform community service.

From February 2003 to August 2003, Applicant attended an inpatient alcohol recovery program. (Answer at 1; GE 10 at 9) He was diagnosed alcohol dependent. (Tr. 48) Applicant completed the treatment, but still had “the mindset of an alcoholic.” (Tr. 45)

In September 2003, Applicant was arrested after police responded to a call that he was wielding a knife in an apartment parking lot and rambling incoherently. (AE 8 at 14) When the police arrived, they charged him with disorderly conduct and criminal damage.<sup>1</sup> Applicant testified that he had not been drinking before this incident. (Tr. 46) Also, he denied the police officers’ account of what happened. Instead, he contended he was walking down the street when two men threatened him. After they jumped in a car, he then threw a rock at it. (GE 16 at 7) I find the police officers’ account of what happened is more credible.

In November 2005, Applicant lost control of his car and crashed it into a small yellow delineator. (GE 7) When the police arrived, Applicant was asleep at the wheel of the car, and its driver’s seat door was open. After smelling the odor of alcohol, the officer woke Applicant and attempted to perform a field sobriety test. The officer stopped the test after concluding Applicant was too intoxicated to safely administer it. (GE 7) Subsequently, Applicant was arrested and charged with “extreme DUI.” (GE 9 at 1) He pleaded guilty, and was sentenced to 12 months of probation, ordered to serve 90 days in jail with 80 days suspended, and ordered to pay a \$1,725 fine. Also, the court ordered Applicant to undergo alcohol treatment and attend an alcohol education class. The 80-day suspension of his jail sentence was contingent upon him complying with probation. (*Id.* at 3)

Applicant complied with the court order. (GE 10 at 9) Applicant successfully completed the treatment in September 2006. (*Id.* at 22) Applicant continues to attend Alcoholics Anonymous (AA) meetings consistent with his counselor’s recommendations. (GE 10 at 22; Tr. 49) Initially he attended several times per week. Now, he attends twice per month. Applicant has not drunk any alcohol since the episode in November 2005 that triggered the DUI arrest. (Tr. 56) According to Applicant’s therapist, he has a supportive network of friends, recognizes the importance of AA, and lives in an environment supportive of recovery. (GE 10 at 5)

In the late 1990s, Applicant was a successful sales representative. (Tr. 43) He lost this job after his first DUI conviction. Between 2000 and 2003, he was an “unemployed drunk.” (Tr. 43) Consequently, by 2005, he had accrued 20 delinquent debts, as listed in the SOR, in the approximate amount of \$20,000. (Answer at 2)

Currently, Applicant earns approximately \$36,000 per year, and has between four and five hundred dollars of monthly after-expense income. (Tr. 58) On March 9, 2009, Applicant negotiated a settlement for the delinquency listed in SOR subparagraph

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<sup>1</sup>Applicant slashed the tires of an automobile in the parking lot.

3.n, a cell phone bill totalling \$508. (AE N) He satisfied it two weeks later, consistent with the agreement. (*Id.*)

Applicant began satisfying a child support delinquency, as listed in SOR subparagraph 3.d, in February 2009. At the time, he was nearly \$4,000 behind. Since then, he has made steady, monthly payments, and has reduced the arrearage to approximately \$1,600. (AE M)

The remaining SOR delinquencies continue to be outstanding. Applicant has neither called nor written any of these creditors. (Tr. 57) He has not enrolled in financial counseling. (Tr. 58)

Applicant completed a security clearance application in October 2007. In response to Section 23.d (Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?), he answered, "Yes," and listed his 2005 arrest. He did not list the earlier alcohol-related arrests.

In his security clearance application, Applicant was also required to disclose any arrests he had been charged with in the preceding seven years that were not alcohol related.<sup>2</sup> Applicant, in his Answer stated that he forgot about the 2003 arrest. Also, he concluded he did not need to list the others, including the alcohol-related arrests because he mistakenly thought they occurred more than seven years before he completed the security clearance application. (Tr. 53)

Applicant indicated on his security clearance application that he was employed continuously between 2002 and 2003, which is contrary to his testimony. (GE 11 at 14) Also, he listed his 2006 alcohol treatment, but failed to disclose his 2003 alcohol treatment, as required, on the security clearance application.

In 2004, Applicant returned to school to earn a master's degree in educational technology. He graduated with honors in 2007. (GE 11 at 11) Applicant is highly active in the community, tutoring students, building housing for the homeless, and raising money for cancer research. (AE E)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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. 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

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<sup>2</sup>Section 23.f (*In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d, or e above? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related).*)

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.”

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 to obtain a security clearance.

## **Analysis**

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

Under this guideline, “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 ¶ 21). Applicant has a history of excessive alcohol consumption and DUIs. In 2005, a therapist evaluated him as alcohol dependent. AG ¶¶ 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,” 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,” and 22(d), “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program,” apply.

Applicant has not consumed alcohol since November 2005. He has a network of friends who support his efforts at maintaining sobriety, and received a favorable prognosis from his therapist. The following mitigating conditions under AG ¶ 23 apply:

(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 AA 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.

## **Guideline J, Criminal Conduct**

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” (AG ¶ 30) Also, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (*Id.*) Applicant’s series of criminal offenses between 2000 and 2005 trigger the application of AG ¶ 31(a), “a single serious crime or multiple lesser offenses.”

The majority of Applicant’s criminal activity stemmed from his drinking problem. He has gotten this problem under control through therapy and AA attendance. Since his last DUI in 2005, he obtained his current job where he has excelled, earned a master’s degree, and immersed himself in community service, volunteering for multiple charities. AG ¶ 32(d), “there is evidence of successful rehabilitation; including but not limited to, the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.”

Applicant’s falsification of his security clearance application in 2007,<sup>3</sup> however, constitutes a crime under 18 U.S.C. § 1001. Consequently, it is too soon to conclude that AG ¶ 32(a), “so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability trustworthiness, or good judgment,” applies.

## **Guideline F, Financial Considerations**

Under this guideline, “failure or inability to live within one’s means satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information.” (AG ¶ 18) Applicant’s history of financial delinquencies triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s financial difficulties corresponded with his descent into alcoholism in the late 1990s. At the low point of his struggle with alcoholism, Applicant, while homeless, was apprehended stealing groceries and liquor from a convenience store. AG ¶ 19(f), “financial problems that are linked to drug abuse, alcoholism, gambling problems, and other issues of security concern,” applies.

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<sup>3</sup>See Personal Conduct section, *infra*.

Applicant satisfied one debt, and has been making payments toward the satisfaction of another for the past nine months. However, he has neither satisfied any other delinquencies, nor contacted the remaining 18 creditors listed in the SOR. Also, although he acknowledged that financial counseling could be helpful, he has yet to enroll. AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is partially applicable, but none of the remaining mitigating conditions are applicable.

## **Personal Conduct**

This security concern is set forth in AG ¶ 15 as follows:

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.

Applicant’s omissions from his 2007 security clearance application raise the question of whether AG ¶ 16(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.” Applicant contends his 2003 arrest occurred after he threw a rock at the car of two men who had threatened him. Conversely, the arresting officer contends that he arrested Applicant after he observed him wielding a knife in a parking lot and rambling incoherently. Regardless of whose recollection is more accurate, it is clear that the events leading to Applicant’s arrest were neither mundane nor forgettable. Consequently, Applicant’s contention that he did not list this arrest on his security clearance application because he forgot it about it is not credible.

Applicant’s lack of credibility demonstrated in explaining the omission of the 2003 arrest undermines the credibility of his explanations for omitting the other arrests from his security clearance application. I conclude that Applicant falsified his security clearance application, as alleged in the SOR, and that AG ¶ 16(a) applies without mitigation.

## **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.

Applicant deserves credit for overcoming his alcohol dependence. He is a good employee who is dedicated to community service. The completion of a graduate degree also reflects favorably upon his character. However, Applicant has yet to make a concerted effort to rehabilitate his finances. Also, he was not candid about the extent of his arrest history and the extent of his alcohol-related problems on his security clearance application. Consequently, upon considering his case in the context of the whole-person concept, I conclude Applicant is an unacceptable candidate for 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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a -2.g:	For Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a-3.c:	Against Applicant
Subparagraph 3.d:	For Applicant
Subparagraphs 3.e - 3.m:	Against Applicant
Subparagraph 3.n:	For Applicant
Subparagraphs 3.o - 3.t:	Against Applicant
Paragraph 4: Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a - 4.b:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge