



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-04978

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: Laura Anderson, Esquire

November 27, 2009

**Decision**

WHITE, David M., Administrative Judge:

Applicant was arrested for Driving Under the Influence (DUI) in 2002. He completed outpatient treatment for alcohol dependence as part of a deferred prosecution agreement. He had another alcohol-related arrest in 2006 and attended relapse prevention treatment. In November 2008, he was inebriated at work. He very recently completed another course of inpatient and outpatient treatment. He is making a good effort at sobriety, but security concerns are insufficiently mitigated to date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his security clearance application on November 6, 2007. On June 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption). 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 acknowledged receipt of the SOR on June 9, 2009. He answered the SOR in writing on June 18, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 15, 2009, and the case was assigned to me on July 21, 2009. DOHA issued a Notice of Hearing on July 24, 2009, and I convened the hearing as scheduled on August 25, 2009. The Government offered exhibits (GE) 1 through 3, which were admitted without objection. Applicant offered exhibits (AE) A through D, which were also admitted without objection, and testified on his own behalf. Two other witnesses also testified for Applicant. I granted Applicant's request to leave the record open until September 8, 2009, to permit submission of additional evidence. Applicant's counsel submitted that evidence on September 3, 2009, and Department Counsel forwarded it the following day without objection. That evidence was marked AE E and admitted. DOHA received the transcript of the hearing (Tr.) on September 1, 2009.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all but one of the factual allegations concerning his alcohol consumption, and denied SOR ¶ 1.a because he thought it implied heavier drinking over the years than he would admit. His admissions are incorporated into the following findings.

Applicant is a 50-year-old software engineer employed by a defense contractor. He earned a bachelor's degree in 1982, and a master's degree in 1998. He has no military service. He worked for his present employer, and held a security clearance without incident, from 1985 to 2000, when he left to accept a higher-paying offer from a consulting firm. That led to a series of layoffs and dot-com business failures, resulting in intermittent employment until he was rehired in October 2007. He is unmarried, with no children. (GE 1 at 6, 11, 13-35; Tr. at 77-82.)

Applicant started drinking around 1977 while in college. Until his first significant unemployment period, from April 2001 to August 2003, he was a social drinker. He normally consumed about three beers a few times a week but occasionally drank to the point of intoxication. He then began to drink more heavily, to the point of daily consumption of larger amounts of alcohol. (GE 3 at 5; Tr. at 96-99.)

In mid 2002, he consulted his doctor about panic attacks, and was advised to cut back his drinking. He did so for a month or two. In September 2002, after breaking up with his girlfriend, he drove to a resort town about 135 miles northeast of his home. There he ate and consumed beer and hard alcohol. Although he denied this during the hearing and did not mention it during his Office of Personnel Management (OPM) interview, he told his alcohol treatment program case manager on October 5, 2006, that he stopped at a liquor store on the way out of town and bought a bottle of vodka that he drank as he drove home. While driving through a town about 15 miles south of his

home, where he intended to stop for dinner, he “fell asleep” while driving and collided with a utility pole. His air bags deployed and prevented any injury. He failed field sobriety and Breathalyzer tests and was arrested and charged with Driving Under the Influence (DUI). (GE 1 at 41; GE 3 at 4, 27; Tr. at 98-99.)

Applicant entered into a deferred prosecution agreement, which required that he successfully complete an approved alcohol treatment program, undergo two years of supervised probation, install an ignition interlock on his car, and pay a fine of \$2,000. He entered an intensive outpatient treatment program in July 2003 and continued there until January 2004. He then transferred to a different intensive outpatient program closer to the location of a new job, which he attended during March and April 2004. In May 2004, having lost the job, he transferred to another site operated by this second program closer to his home and completed his treatment successfully in November 2005. His program reported this to his probation officer in a letter describing his compliance with all program requirements, “good” progress and “very favorable” prognosis. It also described him as “a very good example of how the deferred prosecution program can work to benefit the chemically dependent individual as well as the community.” He was then released from supervised probation. During his treatment, he was diagnosed as alcohol dependent, and was counseled to remain abstinent and continue with support groups upon his discharge. (GE 3 at 4, 19, 32; Tr. at 83-86.)

Applicant started drinking again within a month or two of completing his treatment program, although he was not fully forthcoming about this during his hearing or the intake interview for his subsequent relapse prevention treatment program. (GE 3 at 26, 27; Tr. at 102.) On February 25, 2006, he drove to a resort town in a neighboring state for a wine and seafood festival, fully intending to drink. He drank so much wine, before eating any food, that he became intoxicated to the point that he could not remember what happened. Based on his later review of police reports, he reported to the OPM investigator that he was asked to leave the festival by a security guard. When he did not, the guard contacted a police officer, who asked him to put down his glass of wine. When Applicant forcibly resisted the guard and officer, he was arrested, charged with Disorderly Conduct and Harassment, and held overnight in jail. (GE 2; GE 3 at 3, 27; Tr. at 103-105.)

In April or May 2006, Applicant entered into a diversion program with the other state’s court, under which the pending criminal charges would be dismissed if he completed an approved alcohol treatment program. He returned to the facility where he completed his prior program, and entered a relapse prevention treatment program. During his September 6, 2006, initial intake interview, he told the counselor he drank “a few glasses of wine” at the festival, and had not drunk any alcohol since then. His case manager’s notes from the October 5, 2006 counseling session reflect that Applicant’s initial intake urinalysis results were positive for alcohol. When confronted with this, Applicant said he thought he had admitted drinking since the festival. He successfully completed his relapse prevention program on April 2, 2007, and was discharged with a diagnosis of Alcohol Dependence in early full remission. His prognosis was “[s]atisfactory if patient continues his involvement in sober support network and working

with his sponsor.” It was recommended that he continue to maintain abstinence from alcohol and to attend Alcoholics Anonymous (AA). After Applicant reported completion of the program to the neighboring-state court, his charges were dismissed on April 9, 2007. (GE 2 at 3; GE 3 at 3-4, 15, 26-27; Tr. at 86-88, 103.)

Applicant was rehired by his current employer in October 2007. In December 2007, apparently unaware of the 2006 incident at the wine festival, his local court dismissed the 2002 DUI charge for having successfully completed his deferred prosecution agreement. He resumed drinking alcohol, and reported to the OPM investigator on January 31, 2008, that he had last drunk alcohol on December 31, 2007, and January 1, 2008, consuming a bottle of champagne by himself on each day. He told the investigator that he was concerned that his past alcohol problems might jeopardize his employment, which he valued very highly after many years of employment turmoil. Later, his supervisor began noticing alcohol-related attendance problems and counseled Applicant about them. Shortly thereafter, around November 21, 2008, Applicant was found to be inebriated at work. Applicant testified that his alcohol consumption between April 2007 and November 2008 was “very seldom,” and that he could not recall how much he had to drink before the November incident at work. He was referred into an employee assistance program that found a high level of alcohol content in his blood. He was placed on a leave of absence in January 2009, to attend inpatient alcohol treatment. (GE 3 at 5; Tr. at 64, 67-68, 72-73, 100, 106-108, 117-118.)

Applicant attended inpatient alcohol treatment from January 2 through 15, 2009. After completing that program, he began an intensive outpatient program at a different facility. He completed that program on August 17, 2009. He was compliant with all program requirements, and maintained abstinence throughout this period. The manager of his outpatient treatment center testified that Applicant demonstrated above average commitment and dedication to the program. In describing Applicant’s prognosis, he stated that Applicant will still continue to be alcohol dependent and he should continue to attend 12-step meetings. Since this manager is not a “duly qualified medical professional,” as defined under Guideline G, nor a licensed clinical social worker, his facility medical director, who is an M.D., submitted a letter. He expressed his agreement with the manager’s assessment concerning Applicant’s clinical course and pertinent information. He stated his belief that if Applicant follows his recommended program, he will continue to do well and his prognosis will be excellent. Applicant’s AA sponsor also described Applicant’s renewed commitment to sobriety and extensive participation in AA since January 2009. (AE A; AE B; AE C; AE E at 3; Tr. at 28-46.)

The employee assistance program under which Applicant attended both his inpatient and outpatient treatment programs lasts three years. It monitors his compliance with follow-up recommendations and continuing abstinence through meetings and random urinalysis testing. His program counselor, a licensed clinical social worker, reports that he has been compliant with all appointments, expectations, referrals, tests, and subsequent treatment recommendations from inpatient, outpatient, and aftercare services as of August 26, 2009. (AE A; AE E at 4-5; Tr. at 22-23, 108-109.)

Applicant's supervisor testified that his work has been generally satisfactory, but he is in the bottom third of employees that he manages due to having less experience than the others. He further said that Applicant's attendance at work since completing his inpatient treatment has been exemplary, and there has been absolutely no indication of any subsequent problem with alcohol. (Tr. at 52-74.) A close friend, who has known Applicant for 29 years, described him as "trustworthy, hard working, and highly committed." He further said he is, "a loyal, honest, considerate, and supportive person who cares deeply for other people." (AE D.)

## **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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## **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 conditions that could raise a security concern and may be disqualifying (DCs). The DCs supported by the SOR allegations and asserted by Department Counsel are:

(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;

(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; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant's admitted DUI, Disorderly Conduct, and Harassment offenses in 2002 and 2006 clearly raise security concerns under AG ¶ 22(a). Although charges were later dismissed through deferred prosecution and diversion agreements, he was sufficiently impaired to have driven into a utility pole while unconscious, and to have been unable to remember forcibly resisting security and police personnel who were trying to prevent his further intoxication. He was evaluated as alcohol dependent by the licensed chemical dependency professionals and clinical social workers at all of the treatment clinics he attended, supporting application of AG ¶ 22(e). Finally, he relapsed into regular alcohol consumption in early 2006, a few months after completing his first alcohol rehabilitation program. This drinking continued even after his February 2006 arrest until his entry into a second treatment program in September 2006, as evidenced by his positive intake urinalysis. He again relapsed within months after completing that second treatment program, and admitted consuming alcohol over the New Year 2008 holiday. Therefore, AG ¶ 22(f) also supports security concerns. The subsequent alcohol-related attendance

problems and November 2008 intoxication at work were not alleged in the SOR, so they will not be considered as evidence used to support potential application of additional Guideline G DCs, but may be considered under mitigation and whole-person analysis.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 multiple alcohol-related incidents preclude a finding that the behavior was infrequent, and his 2006 arrest and 2008 impairment at work were relatively recent. He resumed drinking shortly after the successful completion of each of his lengthy outpatient treatment programs in November 2005 and April 2007. His resumed abstinence since his January 2009 inpatient treatment is not of sufficient duration to establish that such conduct is unlikely to recur or no longer casts doubt on his reliability, especially since he only finished intensive outpatient treatment about three months ago in August. Applicant did not yet establish mitigation under AG ¶ 23(a). Applicant has acknowledged his alcoholism, and has begun to demonstrate effective action to overcome it, but he has yet to establish a pattern of abstinence sufficient to overcome concerns raised by his previous relapses.

There is no evidence that he has consumed alcohol since November 2008, and he has made a substantial start toward establishing a pattern of responsible conduct and abstinence. However, as discussed above, insufficient time has passed to establish mitigation under AG ¶ 23(b) given the duration, pattern, and seriousness of his history

of alcohol abuse. Similarly, there is insufficient evidence yet to support mitigation under either AG ¶¶ 23(c) or (d), due to his history of relapses and the qualified nature of the favorable prognoses by a duly qualified medical professional and qualified social workers following each of his three treatment programs. All said, essentially, that his prognosis is favorable as long as he remains abstinent and follows their recommendation to continue followup work with AA. The last two times he suffered relapses within less than a year of completing treatment, and it has only been a few months since his completion of the most recent program. He is taking proper and commendable measures to create future mitigation under these provisions, especially with ongoing monitoring by his employee assistance program, but has not yet done so sufficiently to overcome the security concerns raised by his history and pattern of alcohol abuse.

### **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 established by the record evidence. 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 relevant facts and circumstances surrounding this case. Applicant's conduct of security concern involves multiple alcohol-related offenses over the past seven years, and his ongoing alcohol dependence. All of this occurred while he was mature and accountable for his actions. None of the incidents in and of itself was particularly serious since he was fortunate enough not to have hurt himself or others. Taken together, however, these incidents form a pattern reflecting very poor judgment, flaunting of rules and regulations, and inadequate self-control. He knowingly and voluntarily participated in every incident of security concern, and failed to take necessary steps to change the circumstances under which his problems recurred until fairly recently. It has been less than a year since his most recent incident, and he remains on a company monitoring program until 2012. The inpatient and intensive outpatient supervision by others that he



has undergone since January 2009 lessens the degree to which his recent good behavior can be attributed to his own remorse and rehabilitation. While evidence of an excellent start toward establishing rehabilitation was presented, including his recent outstanding work performance, lifestyle changes, and abstinence from alcohol, it is too soon to confidently conclude that continuation or recurrence of his alcohol problems are unlikely. He made insufficient showing of reduced potential for pressure, exploitation, or duress, especially should a future relapse put his continued employment in jeopardy.

Overall, the record evidence generates substantial doubts concerning Applicant's present eligibility and suitability for a security clearance. Although his recent efforts have been commendable, he has not yet met his burden to mitigate the security concerns arising from his alcohol consumption.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

### **Conclusion**

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

DAVID M. WHITE  
Administrative Judge