



**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. 08-06004

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

April 6, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant misused his former employer’s company van and was involved in an accident while drunk in December 2007. He complied with all subsequent court and alcohol treatment requirements, and demonstrated rehabilitation and mitigation of resulting security concerns. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his security clearance application on February 19, 2008. On December 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G (Alcohol Consumption) 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) 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 January 20, 2009. He answered the SOR in writing on January 27, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 28, 2009, and the case was assigned to me on November 2, 2009. DOHA issued a Notice of Hearing on December 8, 2009, and I convened the hearing as scheduled on January 6, 2010. The Government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered exhibits (AE) A through E, which were also admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 15, 2010.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted three and denied two of the factual allegations concerning his alcohol consumption, and admitted the lone personal conduct allegation. During the hearing, I granted Department Counsel's motion to dismiss the allegation set forth in SOR ¶ 1.b, which Applicant had denied, because it was based on a misinterpretation of the evidence. Applicant's admissions are incorporated into the following findings.

Applicant is a 42-year-old mechanic, employed by a defense base-support contractor for two years. He is married for the second time, with two children and one stepchild, ages 18, 8, and 13, respectively. He has no military service, and this is his first application for a security clearance. (GE 1 at 2, 7, 13-15, 18-20, 23, 29.)

Applicant started drinking around 1983, at age 15. He drank beer to the point of intoxication once or twice a week from then until December 8, 2007. (GE 4 at 11; Tr. at 27-28, 34-37.) During the evening of December 7, 2007, Applicant and his wife drove his newly-issued company van into town to buy some hardware needed to install a ladder rack. On the way, he received a telephone call from some friends inviting Applicant and his wife to join them at a bar near the hardware store for a holiday-season get together. They went to the bar and spent the entire evening partying with the friends. Applicant never made it to the hardware store. (Tr. at 38, 42-43.)

Applicant and his wife left the bar around 2:00 a.m. on December 8, 2007. He had not driven far when he crossed the center line and the oncoming lane of the two-lane road, and collided with some trees beyond the curb on the opposite shoulder. He was slightly injured, but his wife bit her tongue severely enough to require hospital treatment. After police responded, Applicant failed a field sobriety test. He was arrested for driving under the influence (DUI). At the police station, his breath alcohol test readings were .220 and .218. The legal limit is .08. (GE 2; GE 4.)

Applicant had permission to drive the company van between home and work, and while working during the day. He did not have permission to use it for recreational purposes. Two days after his DUI arrest, the company for whom he was working fired him for misuse of the company van. He obtained his current employment in February 2008. (Tr. at 27, 38-39.)

On December 18, 2007, on the advice of his attorney, Applicant underwent a chemical dependency assessment. He was found to be alcohol dependent. (GE 4 at 10-14.) On February 4, 2008, he appeared in court and was granted entry into a two-year deferred prosecution agreement that required five years of probation, installation of an ignition interlock, attendance at a DUI victims panel, an alcohol assessment, and payment of a fine, restitution, and court costs. (GE 3.) On the same date, he enrolled in a two-year intensive outpatient alcohol treatment program as recommended in his alcohol dependency assessment. He successfully completed that program shortly prior to his hearing, and the clinical supervisor of his treatment program reported that his "prognosis for continued abstinence and sobriety is good." (AE A.) The court released him a year early from the ignition interlock requirement in February 2009, and he has paid all required fines, restitution, and costs. (GE 3; GE 4 at 9; AE D; Tr. at 22-25.) Applicant has not consumed any alcohol since December 8, 2007, and continues to regularly attend Alcoholics Anonymous (AA) meetings after having completed all twelve steps. His intention is to continue abstaining from any alcohol consumption. (Tr. at 28, 31-35.)

Applicant has received significant recognition for excellent performance of his work duties in his current position, including a personal letter of appreciation from the admiral commanding the Navy region. Two supervisors also wrote to express their high opinions of his character, integrity, and work ethic. (AE E.) His demeanor during the hearing reflected candor, sincerity, and dedication to continuing his successful rehabilitation and professional efforts in support of the military mission.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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; and

(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.

Applicant's admitted DUI in December 2007 supports security concerns under AG ¶ 22(a). He was evaluated as alcohol dependent by the licensed chemical dependency professionals and clinical social workers at the alcohol assessment and treatment clinics he attended, supporting application of AG ¶ 22(e).

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

- (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 single alcohol-related DUI incident would support a finding that such behavior was infrequent, although he admitted regular consumption, at times to excess and to the point of intoxication, during the preceding 24 years. This history of consumption led to his diagnosis of alcohol dependence. Accordingly, AG ¶ 23(a) does not provide conclusive mitigation standing alone. The unlikelihood of recurrence and reestablishment of his reliability and good judgment are supported only through his successful rehabilitation efforts addressed in the remaining MCs.

Applicant has not consumed any alcohol since December 8, 2007, and he has established a pattern of responsible conduct and abstinence for more than two years. Sufficient time has passed to establish mitigation under AG ¶ 23(b), given the duration and nature of his history of alcohol abuse. Similarly, there is substantial and sufficient evidence to support mitigation under AG ¶¶ 23(c) and (d). Applicant successfully participated in, and recently completed, intensive outpatient alcohol treatment and continues active participation in AA. He has suffered no relapses and the licensed

chemical dependency professional serving as clinical supervisor of the treatment program gave him a good prognosis.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 the DCs under this guideline. The specific Guideline E concern raised by the SOR allegation as asserted by Department Counsel is:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Also raised are the judgment, reliability, and trustworthiness issues the Appeal Board found to be inherent under AG ¶ 15. ISCR Case No. 06-20964 (App. Bd. Apr. 10, 2008).

Applicant was fired from his previous job for improper personal use of a company van, and involving it in the DUI incident discussed above. These acts adequately raise concerns about his judgment, trustworthiness, reliability, and willingness to comply with rules and regulations, to shift the burden to him to establish mitigation. More detailed whole-person analysis will be discussed in the following section.

AG ¶ 17 provides personal conduct MCs. The only MCs with potential applicability to the foregoing security concerns are:

(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; and

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

Mitigation under AG ¶ 17(c) was partially established for the reasons discussed above concerning AG ¶ 23(a). Applicant was originally using the van for valid company business, but succumbed to the temptation to divert into personal use when invited to a holiday celebration by friends. He readily admitted the wrongfulness of this decision and convincingly testified that he learned his lesson from it. He has convinced his present supervisors of his integrity and trustworthiness, corroborating that such conduct is unlikely to recur. Applicant produced substantial evidence to support mitigation under AG ¶ 17(d) as well. His misuse of the van, and the bad judgment involved, were largely alcohol-related problems, for which he has demonstrated successful treatment and rehabilitation. These steps have also eliminated his vulnerability to exploitation, manipulation or duress, because the nature and extent of his former problem have been revealed to those whose good opinion he values, and successfully addressed through treatment. AG ¶ 17(e) was therefore established.

### **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 primarily involved two bad decisions on December 7 and 8, 2007. He diverted from proper to personal use of his company's van when he decided to go to the bar, then he tried to drive it home while severely intoxicated resulting in an accident. His subsequent alcohol assessment also revealed his alcohol dependency. He fully cooperated with the subsequent legal process, and successfully completed a two-year outpatient alcohol treatment program. He has maintained total abstinence from alcohol

since the date of the incident. He is a mature individual, who has demonstrated his responsibility, integrity, and trustworthiness in all other respects. He presented strong and uncontroverted evidence of his rehabilitation and permanent behavioral changes, both to minimize the risk of recurrence and to eliminate any potential for coercion, exploitation, or duress.

Overall, the record evidence generates substantial confidence concerning Applicant's present eligibility and suitability for a security clearance. His post-incident efforts at rehabilitation have been commendable, and he met his burden to mitigate the security concerns arising from his alcohol consumption and personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Dismissed on motion by DC
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

DAVID M. WHITE  
Administrative Judge