



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-06349
SSN:-----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

For Applicant: *Pro se*

March 19, 2009

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on November August 21, 2005 (Government Exhibit 2). He submitted an e-QIP Attachment on August 6, 2005 (Government Exhibit 1). Finally, he submitted a Questionnaire for Sensitive Positions on January 15, 2008 (Government Exhibit 3). On October 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, G and H concerning the Applicant. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on November 6, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to

proceed on December 3, 2008. The case was assigned to another Administrative Judge on December 4, 2008. I received the case assignment on December 19, 2008. DOHA issued a notice of hearing on January 8, 2009. I convened the hearing as scheduled on February 4, 2009. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through D, without objection. DOHA received the transcript of the hearing on February 11, 2009. The record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The Applicant is 28, single and has an Associate of Arts degree. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Guideline J - Criminal Conduct** **Guideline G - Alcohol Consumption**

The Government alleges under Guideline J that the Applicant is ineligible for clearance because he has engaged in criminal acts. The Government further alleges under Guideline G that the Applicant is ineligible for clearance because he uses intoxicants to excess. The Applicant admitted the factual allegations in the SOR. Those admissions are hereby deemed findings of fact.<sup>1</sup>

The Applicant has had three alcohol related incidents - in 1999, 2002 and 2006. The Applicant was arrested in July 1999 for Purchase/Consumption of Alcohol While Under 21. He received a fine for this incident and one year probation. (Transcript at 40-41.)

The Applicant's second alcohol related incident happened in June 2002. On that occasion, the Applicant was drinking and riding his motorcycle. He fell off of the motorcycle and was injured. He was driving himself to the hospital when he was pulled over by the police and arrested for Reckless Driving and Driving With Blood Alcohol Content (BAC) Over .08%. He plead guilty to the Reckless Driving charge and was fined and sentenced to three years probation. (Government Exhibit 1; Transcript at 41-43.)

The Applicant testified that he drank the most during the years 2003-2004. He did not drink and drive during this period, but would have parties at the house he shared with his sister. (Transcript at 43-44.)

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<sup>1</sup>The SOR as written had four allegations under Paragraph 1. After the presentation of evidence, the Government moved to strike subparagraph 1.a. of the SOR to comport with the evidence presented. The subparagraph was so struck and the remaining three subparagraphs were renamed. The SOR no longer has a subparagraph 1.d. (Transcript at 45-48.)

The Applicant's third alcohol related incident occurred in January 2006. He offered no excuse for his poor judgment in drinking too much and getting behind the wheel. He was in an automobile accident and subsequently arrested for Driving Under the Influence of Alcohol, Driving With BAC Over .08% and Resisting Arrest. He plead guilty to the Driving With BAC Over .08% charge and received a fine, four days in jail and was placed on five years summary probation. (Government Exhibits 5 and 6; Transcript at 44-45, 48-49, 56-57.)

The Applicant states that this last incident changed his life. Because of the 2006 arrest, he was released from a responsible job with the Federal Government during the probationary period. He still drinks, but always has a sober ride and never drives after drinking alcohol. He has been a sober ride for others. He lost his driver's license for a year after the last conviction, and found out a lot about himself while having to take public transportation to work and depending on other people in order to see his young son. He is determined to learn from these incidents and not engage in such conduct again. (Transcript at 29-32, 52-54, 57-59.)

#### **Guideline H - (Drug Involvement)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has used illegal drugs in the past.

The Applicant admitted that he used amphetamines occasionally for about a year between December 1999 and January 2001. He used marijuana on an occasional basis from 1997 until 2003. At the beginning he used drugs because of the rush, but he eventually grew to dislike them and stopped once he began a career in security that precluded illegal drug use. He regrets the use and wishes he had never done them. The Applicant states he has disassociated himself from the people he used drugs with in the past. Furthermore, the Applicant submitted a statement giving his permission to be randomly drug tested and stating, "I understand that if at any time I test positive, my security clearance will be revoked." (Applicant's Exhibit D; Transcript at 32-38.)

#### **Mitigation**

A person who is both a work associate and friend submitted a letter stating that the Applicant is a person of integrity and moral character. (Applicant's Exhibit A.) The Applicant's supervisor submitted a letter stating that the Applicant is "an honest, trustworthy, dedicated, and hard working individual." (Applicant's Exhibit B.)

The Applicant lives with his mother. She submitted a statement stating that she has strict rules against drunkenness and drug use in her home, and the Applicant obeys them. She also confirmed that he is careful about drinking and driving and arranges for alternate transportation in advance. (Applicant's Exhibit C.)

## Policies

Security clearance decisions are not made in a vacuum. 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 useful 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 the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Likewise, 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, 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 as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline J - Criminal Conduct**

### **Guideline G - Alcohol Consumption**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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 Applicant was involved in three alcohol related incidents: 1999, 2002 and 2006. The Applicant intends to consume alcohol in the future, but in a responsible manner and never drink and drive again.

Under the Criminal Conduct guideline, the following Disqualifying Conditions are applicable. AG ¶ 31.(a) “A single serious crime or multiple lesser offenses.” AG ¶ 31.(d) “Individual is currently on parole or probation.”

After considering the evidence in the record, I find that the following Mitigating Conditions also apply to this case. Under AG ¶ 32.(a), “So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness or good judgment.” In addition, AG ¶ 32.(d) states, “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.”

There is one Disqualifying Condition concerning Alcohol Consumption that applies to this case. 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.”

Under the particular facts of this case, the following mitigating condition clearly applies to the Applicant's situation. AG ¶ 23.(a) states that it can be a mitigating condition when, "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."

The Applicant has had three alcohol related incidents in the past ten years. Two incidents involved drinking and driving. While that is certainly nothing to be taken lightly, there is no evidence of a pattern of abuse here. His last incident occurred three years before the record closed. All the available evidence shows that the Applicant, having matured since his first arrest, has taken positive steps to avoid alcohol problems in the future. I have considered the fact that he is still on probation, as well as pertinent character changes, such as his being a sober ride for other people. The evidence is clear that the drinking and driving offenses are events of his past, and will not be repeated. The Applicant has mitigated the security significance of these incidents.

### **Guideline H - (Drug Involvement)**

The security concern relating to the guideline for Drug Involvement is set out in AG ¶24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability or trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

The Applicant, when he was a young man, used marijuana and amphetamine for several years. The amphetamine use stopped in 2001 and the marijuana use in 2003. He has credibly and repeatedly expressed his determination not to use illegal drugs in the future.

One Disqualifying Condition has application in this case. ¶ 25.(a) "Any drug abuse."

I have considered all the evidence in the record and find that two Mitigating Conditions also have application, and justify a finding for the Applicant on this allegation. ¶ 26(a) "The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." ¶ 26.(b) "A demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation."

## 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) 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. The Applicant is a hard-working, respected, young man who has had three alcohol related incidents in the last ten years. There is little to no evidence that these incidents show a pattern, or that he is alcohol dependent or an alcohol abuser. I have also considered his minor drug use, which he convincingly describes as being the actions of an immature person, and that he is no longer that person. In viewing all the facts of this case, I find that the Applicant has mitigated the security significance of his prior conduct. As set forth at length above, I find that the that there have been permanent behavioral changes under AG ¶ 2(a)(6); and that the likelihood of continuation or recurrence is close to nil (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has mitigated the security concerns arising from his alcohol related incidents, the related criminal conduct and his drug use.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the Government's Statement of Reasons.

## 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:	FOR THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	For the Applicant
Paragraph 2, Guideline G:	FOR THE APPLICANT
Subparagraph 2.a:	For the Applicant
Subparagraph 2.b:	For the Applicant
Paragraph 3, Guideline H:	FOR THE APPLICANT
Subparagraph 3.a:	For the Applicant
Subparagraph 3.b:	For the Applicant

## Conclusion

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

WILFORD H. ROSS  
Administrative Judge