



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



In the matter of: )  
)  
) ISCR Case No. 08-07323  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

April 14, 2010

---

**Decision**

---

GOLDSTEIN, Jennifer I., Administrative Judge:

Security concerns are raised under the guidelines for Alcohol Consumption and Personal Conduct. The allegations pertain to Applicant's history of alcohol abuse over 25 years and poor judgment with respect to illegal drug use while holding a security clearance, solicitation of prostitutes, a robbery in which Applicant was the victim, and a workplace sexual encounter in a secured area. He has not met his burden to mitigate the security concerns raised under Alcohol Consumption and Personal Conduct. Clearance is denied.

**Statement of the Case**

On October 29, 2009, 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 23, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 25, 2010. A complete copy of the file of relevant material (FORM) was received by Applicant on February 11, 2010. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. As of March 26, 2010, he had not responded. The case was assigned to me on March 30, 2010.

### **Findings of Fact**

In Applicant's response to the SOR, he admitted the conduct alleged in SOR ¶¶1.a-1.c, 2.a, 2.d-2.g. He denied ¶ 2.b. On ¶ 2.c, he indicated "I neither admit or deny, see past statement." Applicant's response to ¶ 2.c. will be treated as a denial. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 48-year-old employee of a defense contractor. He holds a master's degree in mechanical engineering. He has never been married and has no children. He has worked in the defense industry since 1983. He held a security clearance from 1983 through 2006, when his top secret sensitive compartmented access was revoked due to excessive Alcohol Consumption and Personal Conduct, set out below. (Item 4; Item 5 at I-6, I-38, I-46.)

Applicant has a long history of alcohol abuse. He was arrested in 1981 for driving under the influence of alcohol (DUI). He was placed on probation for six months for this offense. In his Answer to the SOR, Applicant admitted consuming alcohol in excess and to the point of intoxication over a 27-year period, extending until at least 2008. Additionally, alcohol was a factor in some of the instances discussed below.

During the time Applicant possessed a security clearance, he engaged in a number of questionable activities. In approximately April 1984 through June 1985, Applicant used both marijuana and cocaine on six occasions. He indicated he used cocaine and marijuana infrequently "for a short duration after I left the university while employed." Applicant again used an illegal substance, hashish, in November 2001. In a letter dated January 19, 2005, Applicant recounted an incident involving hashish to his security office. He indicated that while vacationing in South America, he was offered a home-made cigarette from a "European." Applicant inhaled from the lit cigarette and "I noticed the tobacco had been most likely laced with a narcotic, which I inadvertently inhaled." Applicant continued, "At that point I used poor judgment (likely due to being intoxicated), and I did take a few more puffs." Applicant was drinking alcohol and was intoxicated on this occasion. (Item 4 at 29-30; Item 5 at I-11, I-23, I-30, I-47.)

In addition to Applicant's drug use, he has solicited prostitutes on two occasions. In 1995, Applicant solicited the services of a female foreign national while vacationing

outside of the United States. Applicant met the prostitute at a nightclub and paid her \$100. In 2003, he solicited the services of a prostitute while in Las Vegas, Nevada. He was intoxicated on both occasions. (Item 5 at I-12, I-21, I-25, I-28, I-48.)

Similarly, Applicant's alcohol use led to another precarious situation. In 2004, while vacationing in another South American country, Applicant went to a local bar close to his hotel. Prior to going out, he consumed a bottle of wine and two mixed drinks. During the course of the evening, he met two foreign females. They sat together and Applicant consumed several more beers. Applicant believes that one of the females "spiked" his beer with some type of knockout drug and later sprinkled the same drug onto his french-fries. After eating the fries, he felt strangely. The females brought Applicant to his hotel room. He remembers undressing and showering with one of the females. The next morning, he woke late and discovered he had been robbed of his valuables. In a separate account, Applicant claimed the entire robbery took place within 20 minutes. (Item 5 at I-9, I-11, I-21, I-24, I-25, I-28, I-47; Item 6 at I-72, I-75.)

Applicant also disclosed that he had sex with his former girlfriend in his office located inside a secure area, presumably while holding a clearance. The encounter occurred during normal working hours. She was a cleared employee, although it is not clear from the record if she had access to the secured area. (Item 5 at I-6, I-12, I-48.)

At the height of Applicant's alcohol consumption in approximately late 2005 to early 2006, he was consuming one pint of hard alcohol nightly, on weekdays. On weekends, he usually consumed even more alcohol, and became intoxicated. He claimed that he drank in order to sleep. He typically would consume alcohol at home, alone, in order to avoid trouble, although he admitted to drinking and driving approximately twice a year, without detection by authorities. Applicant attributed his highest levels of alcohol consumption to the deteriorating health and subsequent passing of close family members. After the revocation of his security clearance in 2006, Applicant sought alcohol counseling through his employee assistance program. He met with a psychologist approximately eight times between August 1, 2006 and March 3, 2007. Applicant terminated treatment when he felt he had his alcohol use under control. The Government presented Applicant's records of treatment obtained from his psychologist, but the records contained no decipherable diagnosis. In a September 19, 2008 letter, Applicant contended he "refrain[ed] from hard alcohol consumption and radically chang[ed] the amount and patterns of alcohol consumption in general" but he continued to consumed beer and wine in moderation. However he failed to provide any information about his current, 2010, levels of alcohol consumption. (Item 3; Item 4; Item 5 at I-1, I-10, I-12, I-14, I-22-24, I-29, I-46-47, I-50; Item 6 at I-72, I-76; Item 7.)

Applicant presented no letters of support. Records indicate that he had two security clearance violations during the period he possessed a clearance, including bring home a classified document and inadvertent disclosure of classified information. (Item 5 at I-149.)

## 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 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. 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 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 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:

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. Two 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 been involved in several incidents away from work in which alcohol played a role. Clearly, his 1981 DUI conviction, along with his admission of continuing to drive after becoming intoxicated approximately twice a year, raises security concerns. In addition, he repeatedly found himself in precarious situations, due to his alcohol abuse and poor judgment while consuming alcohol. His use of poor judgment while under the influence of alcohol away from work is disqualifying under AG ¶ 22 (a).

Additionally, Applicant engaged in a pattern of habitually consuming alcohol to the point of intoxication over a 27-year period. It is clear from Applicant's admissions and medical record that his alcohol consumption has been excessive. Disqualifying AG ¶ 22 (c) applies.

Under AG ¶ 23, the following mitigating factors are potentially relevant:

(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 habitual consumption of alcohol was recent, frequent, likely to reoccur, and casts doubt on his judgment. Over half of his life, Applicant has engaged in excessive alcohol use. While Applicant indicated that he significantly curtailed his alcohol use in 2006 to 2008, with no reported incidents in the subsequent two to four years, in this instance, I cannot find that "a significant period of time has passed without any evidence of misconduct," in light of his long history with alcohol. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4 2004). Additionally, there is no credible record evidence that reflects Applicant's current level of alcohol consumption has declined, other than his 2008 self-serving statement that he consumes beer and wine in moderation. Applicant's alcohol related incidents cast serious doubt on his judgment. He has chosen to make poor choices while intoxicated including several instances of driving drunk. AG ¶ 23(a) does not apply.

Applicant has, in part, acknowledged his alcohol abuse and sought treatment to overcome his alcohol problem. However, Applicant has failed to demonstrate responsible use or abstinence. Applicant may have ceased consuming hard alcohol in 2006, but he continued to consume beer and wine. Additionally, he provided no updated record to show his current level of consumption. Therefore, AG ¶ 23(b) is not applicable.

AG ¶ 23(c) does not apply because Applicant made no claim that he is currently participating in counseling or a treatment program. Applicant has the burden to present evidence to support the mitigating condition and he failed to offer any evidence in support. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

The record is devoid of evidence that would allow for the applicability of AG ¶ 23(d). While Applicant participated in alcohol counseling from August 1, 2006, to March 3, 2007, the records offered by the Government provided no indication that Applicant successfully completed his treatment and contained no clear diagnosis or prognosis. Further, Applicant terminated treatment when he decided his problem was under control. He provided no evidence to suggest that his psychologist agreed with his decision. AG ¶ 23(d) does not apply.

## 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:

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

In addition to Applicant's alcohol problem, he has made a number of decisions that reflect poorly on his character. Applicant exercised questionable judgment when he used illegal substances while holding a clearance in 1984-1985 and again in 2001, when he engaged the services of prostitutes in 1995 and 2003, and when he had sexual relations during business hours in his secured-area office with his former girlfriend. Applicant's history of irresponsible behavior and questionable judgment makes him vulnerable to exploitation, manipulation, or duress. His irresponsibility has made him a target for robbery in the past, and without corrective action, leaves him vulnerable in the future. AG ¶ 16(c) and ¶ 16(d) apply.

Under AG ¶ 17, the following mitigating factors are potentially relevant:

(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.

Applicant's lapses in judgment were all serious and significant instances that occurred over a long period of time. Each indiscretion casts doubt on his reliability and trustworthiness. Taken together they show a pattern of inappropriate behavior demonstrating questionable judgment, unreliability, and untrustworthiness indicating he may not safeguard properly protected information. Additionally, not enough time has passed to establish that Applicant will refrain from his 27-year pattern of poor decision making. AG ¶ 17(c) does not apply.

Applicant has acknowledged that he has made poor choices in the past, but has not demonstrated any positive steps to change his behavior, other than his brief alcohol treatment. The alcohol treatment is not mitigating because he did not present evidence that he successfully completed treatment and he continues to consume wine and beer. Further, not all of the incidents of poor judgment involved alcohol. There was no alcohol use indicated in Applicant's sexual encounter with his then girlfriend in his office. AG ¶ 17(d) does not apply.

Likewise, AG ¶ 17(e) is inapplicable. Applicant contended that he took positive steps to reduce his alcohol consumption from 2006-2008. However, we don't know what level he actually reduced it to, nor does the record reflect what his current level of alcohol consumption is. Further, as noted above, alcohol was certainly a contributing factor in most instances of poor judgment, but not all instances. Applicant failed to show how he had reduced or eliminated his vulnerability to exploitation, manipulation, or duress.

### **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.

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 warrant additional comment. Applicant offered no letters in support of his application. He is an educated and mature man who has worked in the defense industry for 27 years. He has had two security clearance violations.

Although Applicant had been entrusted with a high level security clearance, his behavior from 1983 through 2006 reflected a disregard for the high standards that comes with the responsibility of holding a security clearance. He chose to engage in drug use, solicit prostitutes, disrespect his workplace (by having sexual relations in his office amidst classified materials), and consume great quantities of alcohol. He has offered little evidence to suggest that he now takes the responsibilities of holding a security clearance seriously.

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-c.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.g:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Jennifer I. Goldstein  
Administrative Judge