



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-07618
	)	
Applicant for Security Clearance	)	

**Appearances**

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

October 21, 2010

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated the Alcohol Consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, Alcohol Consumption. 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 for cases after September 1, 2006.

Applicant answered the SOR on June 26, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2010. DOHA issued a notice of hearing on August 26, 2010, and the hearing was convened as scheduled on September 24, 2010. The Government offered Exhibits (GEs) 1 through

8, which were admitted without objection. The Applicant offered Exhibits (AEs) A through I without objection, called one witness, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 30, 2010.

### **Findings of Fact**

Applicant admitted the SOR allegations ¶¶ 1.a, through 1.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47-years old and has been an employee of a defense contractor for the past 25 years. He is married and has a 14-year-old daughter. He has possessed a security clearance for 20 years. (GE 1; GE 2; AE A; Tr. 37-39, 68-69.)

Applicant began consuming alcohol at the age of 17, in approximately 1982. On January 20, 2005, he was arrested and charged with Driving under the Influence of Alcohol, DUI with Blood Alcohol of 0.08% or Higher, and Wet Reckless. Applicant pled guilty to Wet Reckless and was placed on summary probation for three years. He was also required to enroll in a three month first-offender program and pay a fine of \$300. Applicant was 42-years old at the time of his first DUI. On this occasion, he had been out alone at a bar and grill for dinner. He consumed two to four margaritas with his dinner and then chose to drive home. After this arrest, Applicant abstained from alcohol use for two years. (GE 1; GE 2; GE 3; GE 8; Tr. 38-40, 43-45.)

In 2007, Applicant resumed his alcohol use. Applicant chose to resume drinking with his friends after work and on the weekends. At first, he limited his alcohol consumption to approximately four beers per week. However, his drinking increased. In fact, Applicant admitted, during his testimony, that from approximately 1997 to 2007 (with the exception of the two years after his 2005 DUI), Applicant would become intoxicated two-to-three-times per week with his friends and then drive approximately 30 miles home. He often would consume alcohol outside of his home as his wife did not approve of his alcohol use. (Tr. 40-43, 44-45, 61, 71-72.)

On November 19, 2007, Applicant was again arrested and charged with Under the Influence of Drugs/Alcohol and 08% More Weight Alcohol Drive Vehicle. He was found guilty and sentenced to 48 months of unsupervised probation with the condition that he attends an 18-month court ordered alcohol recovery program, 49 Alcoholics Anonymous (AA) meetings, and serve one day in the county jail. Applicant presented evidence that he completed the court's requirements, but he did not provide any documentation to establish that his probation was terminated early. He is still on probation for this offense. On the night of his arrest, Applicant had been out alone at a bar watching football games. He consumed approximately eight beers. He contends that he did not feel drunk on this occasion and had a lot of water prior to driving. However, he reported his BAC was 0.13%. (GE 4; GE 5; GE 7; GE 8; AE A; AE B; AE C; Tr. 44-49.)

In addition to completing the court ordered treatment, Applicant sought help through the employee assistance program offered by his employer. He was referred to an outpatient program. From November 2007 through March 2008, he attended a 15-week out-patient course that consisted of group sessions. He received a certificate of completion after attending the required 125 hours. Applicant has also sought to better himself through taking a three-month Dale Carnegie course. During the past three years, Applicant has received his company's President's award and has been awarded three U.S. "trade secrets." (GE 5; AE A; AE B, AE C; AE G; AE I; Tr. 35-36, 49-53.)

Applicant claims that he has been sober since his last arrest in November 2007. He testified that he continues to attend AA approximately two times per month. He indicated he no longer associates with his drinking friends. Applicant has never had a sponsor in AA. He asserts that he has completed the first three steps in the 12-step program; however, he was unable to recall what those steps were when asked on examination. He referred to a printout of the steps for aide. Further, he was unable to identify the name of the handbook relied upon in AA meetings during his testimony. (AE A; Tr. 53-55, 74-76.)

Applicant denied ever being diagnosed with any type of alcohol dependency or alcohol abuse at hearing, although his physician had prescribed him Campral, a drug that would help him abstain from alcohol. Applicant's wife testified that Applicant has not consumed alcohol in almost three years and she believes her husband is committed to abstinence. However, she acknowledged that Applicant promised he would not drink alcohol again after his first alcohol related arrest in 2005. (GE 4; GE 5; Tr. 72, 75-90.)

Applicant has the support of his manager and two colleagues. The letters of support indicate Applicant is well respected and a great co-worker. Each recommended Applicant for a security clearance. (AE D; AE E; AE F.)

### **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, 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.

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 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.

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 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 guideline notes several conditions that could raise security concerns under AG ¶ 22. The following 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 had two criminal convictions for driving after consuming alcohol, including his 2005 Wet Reckless and his 2007 DUI. These incidents brought to light Applicant's pattern of consuming alcohol to the point of intoxication and then driving home several times per week from 1997 to 2005 and again in 2007. AG ¶ 22 is disqualifying.

I have considered all of the Alcohol Consumption Mitigating Conditions under AG ¶ 23 including:

(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 licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has failed to establish that any of the above mitigating conditions fully apply to his case. Applicant was placed on probation in February 2008, for 48 months, and remains on probation for this offense, despite completing the court ordered treatment. Further, he had a two year period of abstinence after his 2005 Wet Reckless conviction and subsequent first offender alcohol and drug education program, but eventually returned to the consumption of alcohol, despite his promises to his wife. Not enough time has passed after Applicant's second alcohol related conviction to insure that he won't resume his pattern of driving after becoming intoxicated after his probation is terminated. While Applicant has completed his court ordered treatment and outpatient treatment program, I do not find his testimony regarding his commitment to overcome his alcohol problem credible. His inability to recall the first three steps of AA, after

testifying that he had completed the first three steps, created doubts in my mind regarding the sincerity of his participation in that program. He has no sponsor and does not appear to be an active participant in AA meetings. His wife's testimony on Applicant's abstinence was unconvincing, as Applicant had intentionally consumed alcohol outside his home in the past because he knew his drinking upset her. Overall, the evidence does not support that he has mitigated the Alcohol Consumption concern.

### **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. 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 Guideline G in my whole-person analysis.

After considering all of the nine adjudicative factors listed in AG ¶ 2(a), I find that none of the factors are clearly mitigating. While Applicant has a number of favorable character references and has received some employment related awards, his alcohol consumption is still of concern. He was a mature adult when he chose, two to three times per week, to drive after becoming intoxicated, over a long period of time extending from 1997 to 2005 and again in 2007. Only three years have passed since his last incident, and those three years are part of Applicant's probationary period for the court.

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 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	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.

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Jennifer I. Goldstein  
Administrative Judge