



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



In the matter of: )  
)  
) ISCR Case No. 08-07762  
)  
)  
Applicant for Security Clearance )

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 28, 2009

**Decision**

---

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On July 25, 2006, Applicant submitted a Questionnaire for National Security Positions (SF 86). On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline J (Criminal Conduct) and 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 answered the SOR in writing on April 2, 2009, and requested a hearing before an administrative judge. On June 4, 2009, DOHA assigned the case to me and issued a Notice of Hearing on June 16, 2009. The case was heard on July 8, 2009, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and called one witness. Applicant Exhibits (AE) A through X were admitted into evidence without objection. DOHA received the hearing transcript on July 15, 2009.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegation contained in ¶ 1.a and admitted the allegation contained in ¶ 2.a. His admission is incorporated into the following findings:

Applicant is 55 years old and married. He has three children, two sons and one daughter. One son is in the U.S. Navy and the other son is in the U.S. Air Force. His daughter is a homemaker. In February 2000, another son was murdered while on active duty with the U.S. Navy.

Applicant has had a “fantastic military career.” (Tr. 29) He enlisted into the U.S. Air Force in September 1972 and retired in September 2001. He was recalled after September 11, 2001, and retired again in February 2002. He was a chief master sergeant (E-9) and worked in communications during his entire military career. He served in Vietnam, the Persian Gulf, Desert Storm, Japan, Korea, Guam, Philippines, and other places. He earned six meritorious service medals and held a Top Secret security clearance during his career. (Tr. 27) He has an associate’s degree in telecommunications that he earned while in the service and is a certified security specialist. After he retired from the Air Force, Applicant began working for Government contractors on military bases. Currently, he is the configurations manager for the information technology component of the military command that serves about 140,000 users. (Tr. 31)

In January 2003, Applicant was involved in a serious motor vehicle accident on his way home after he consumed five beers with friends at a bar. He lost control of his car and hit an oncoming car. Both he and the other driver were injured and taken to the hospital. He received a concussion and had surgery on his jaw. The other driver had surgery to replace his hip. His blood alcohol level was over the legal limit of 1.0 and less than 2.0 at the time of the accident. (GE 4)

In March 2003, Applicant was charged with Aggravated Vehicular Assault, a felony. In July 2004, he pled guilty to the charge and was found guilty. The court sentenced him to one-year imprisonment and three years of probation. He was fined \$1,000, and his driver’s license was suspended for two years. He was confined from August 2005 to July 2006 (less than one year), and then placed on probation. His driver’s license was reinstated in August 2006. (Tr. 35-38) He was released from

probation in July 2007, after serving one year. Subsequently, he resolved a civil negligence case brought by the other driver for \$20,000. (GE 4 at 2)

Applicant began consuming alcohol after his first overseas assignment in 1974 when he was 22 years old. He continued to consume alcohol until the accident in 2003, after which he ceased drinking alcohol for two years. (Tr. 56) He now consumes alcohol periodically and generally at home. (Tr. 39; 66) He does not drink alcohol and drive. (GE 4; Tr. 38) He was never diagnosed as having an alcohol disorder or treated for alcoholism.<sup>1</sup> He received counseling while in prison, which included information about alcohol abuse. (Tr. 57) He has never been involved in any other alcohol related incident. (*Id.*)

Applicant called a witness who assumed Applicant's previous supervisory position in the Air Force and subsequently became Applicant's supervisor when Applicant began his current employment. He has a Top Secret clearance. He is aware of Applicant's car accident and incarceration. He has complete confidence in Applicant's integrity and leadership. He asserted that Applicant was held in high esteem in the Air Force and continues to be respected in his job. In testifying about Applicant, he stated:

And I'll tell you, [Applicant] behind closed doors by himself does the right thing. He not only does it in public. I've come behind him and found nothing but quality, integrity, honesty, leadership.

[Applicant] rose to the rank of chief master sergeant and was a chief among chiefs. He was a person in that position that was sought out by other chiefs for situations, what to do, right or wrong, or dealing with personnel.

Since retiring, I've had interactions with [Applicant]. And in or out of uniform, it hasn't changed. In my mind, I really honestly from my heart, this is an individual that has strong integrity and understands, fully understands the mission of keeping the Government safe. (Tr. 75)

Applicant presented his case in a very organized manner and provided numerous relevant exhibits. He was candid and remorseful about his behavior. He took full responsibility for the situation. (AE 1; Tr. 35) He admitted that the incident has changed his life, essentially for the better, as a result of what he has learned personally and from the support he has received from his family and friends. (Tr. 42) He is committed to avoiding any situation that could put him at risk of harming himself or others. (Tr. 61-62)

---

<sup>1</sup>After serving on active duty in 1992, Applicant received psychiatric treatment for post-traumatic stress disorder. He also received treatment and counseling for depression after his son was killed in 2000. He continues to see a psychiatrist for anti-depressants, on an as needed basis. He takes medication if and when he feels depressed. (Tr. 61-62) His psychiatrist has never recommended that he be evaluated for substance abuse. His mental health has not been raised as a security concern.

Applicant submitted 14 letters, strongly supporting his request for reinstatement of his security clearance and addressing his integrity and work ethics. The authors include former colleagues, current colleagues, a lawyer, and friends. All of them have known Applicant for a number of years and are aware of his conviction and incarceration. A teammate of Applicant for the past seven years wrote that Applicant “has been a stellar employee abiding by and enforcing the many DoD and AF instructions that guide our daily work activities. He has executed his many duties with loyalty and dedication to accomplishing our mission and the larger AF vision.” (AE R) A colleague for 17 years noted that he and other colleagues are very aware of Applicant’s situation and his decision never to consume alcohol and drive. (AE S) A retired chief master sergeant, who has known Applicant for more ten years, considers Applicant to be, unequivocally, trustworthy. (AE U) A former technical sergeant serving under Applicant (now a lawyer) believes that Applicant’s accident was an isolated incident in which Applicant made a serious error in judgment. However, he does not believe that Applicant could have been promoted to chief master sergeant without having demonstrated a history of exercising reliability and good judgment. (AE P) A retired senior noncommissioned officer in the U.S. Air Force and the program manager for Applicant’s command wrote:

The likelihood that this one event, born of the confluence of circumstances, could possibly repeat itself or be exploited for any gain is negligible, and I am fully confident based upon my observations of [Applicant’s] integrity and bearing in his daily life, that he has put his past behind him after paying for his actions, and should be permitted continue to serve the [command]. (AE V)

## **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 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 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.” Section 7 of Executive Order 10865 provides that 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.”

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 an 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**

The security concern pertaining 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.

AG ¶ 22 describes a condition that could raise security concerns and may be disqualifying 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.

In January 2003, Applicant was involved in a serious automobile accident that occurred after he consumed alcohol. The evidence is sufficient to raise the above disqualification.

After the Government produced substantial evidence of that disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concern. AG ¶ 23 includes one condition that may potentially mitigate a security concern arising from alcohol consumption:

- (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.

Applicant's accident occurred in January 2003, over six years ago. There is no evidence of similar alcohol-related incidents having occurred before or after that date. Based on the record, this was an isolated incident in Applicant's life in which he exercised poor judgment, and it does not cast doubt on his current reliability or trustworthiness. Applicant has limited his alcohol consumption over the past several years and no longer consumes alcohol and drives a car. His colleagues have observed his commitment to never drink and drive. AG ¶ 23(a) applies.

#### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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.

AG ¶ 31 describes one condition that could raise a security concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses.

Applicant admitted that in July 2004, he pled guilty to a felony and was subsequently imprisoned for less than a year from August 2005 until July 2006. He served one year of probation and had his driver's license suspended for two years. The evidence is sufficient to establish said disqualification.

AG ¶ 32 provides two conditions that could mitigate security concerns arising under this guideline:

- (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; and
- (d) 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.

AG ¶ 32 (a) applies for the same reasons as discussed above under AG ¶ 22(a). The criminal conduct occurred more than six years ago. Applicant provided substantial evidence of successful rehabilitation. He was released two years early from the three year term of criminal probation. His driver's license has been reinstated. His colleagues attest to his current good employment record. There are no subsequent incidents of criminal activity. He did not hesitate to express his remorse over his conduct and his commitment to monitoring his future behavior. AG ¶ 22(d) applies.

### **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). They include the following:

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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, including Applicant's age, history, and candid testimony. Applicant is a 55-year-old man, who honorably served the United States for 29 years. He had a distinguished and successful military career, as evidenced by awards and numerous letters from current and former colleagues, all of whom are aware of his criminal conviction. In January 2003, he made a grave error in judgment when he decided to drive after consuming alcohol. That mistake caused him irreparable harm, as he now carries a felony conviction and period of incarceration on his record. Other than that isolated incident (albeit very serious), there is nothing else in his background that raises security concerns. In fact, his military service and subsequent civilian employment document a life of responsibility and achievement. After listening to him testify and observing his demeanor, I believe that it is unlikely that any similar lapse in good judgment will occur. This man has been very humbled and shamed by the experience. He is very remorseful and cautious about his conduct, especially as it relates to the consumption of alcohol. He does not pose a security risk.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the criminal conduct and alcohol consumption guidelines.

### **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 APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline G:	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.

---

SHARI DAM  
Administrative Judge