



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



In the matter of: )  
)  
) ISCR Case No. 08-07808  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel

For Applicant: *Pro se*

July 15, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for alcohol consumption. Accordingly, his request for a security clearance is granted.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), which he signed on July 10, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

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<sup>1</sup> Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

On December 31, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline G (Alcohol Consumption) of the Revised Adjudicative Guidelines (AG).<sup>2</sup> Applicant signed his notarized Answer to the SOR on January 12, 2009, in which he admitted to all allegations in the Statement of Reasons. He also requested a decision without a hearing. In accordance with ¶E3.1.8 of the Directive, the government requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 17, 2009, and the case was assigned to me on March 19, 2009. DOHA issued a Notice of Hearing on March 24, 2009 and I convened the hearing as scheduled on April 21, 2009.

During the hearing, the Department Counsel offered five exhibits, marked as Government Exhibits (GE) 1 through 5, which were admitted. Applicant testified and did not present witnesses. He offered three exhibits, Applicant Exhibits (AE) A through C, which were admitted. I held the record open to allow Applicant to submit additional documentation. He timely submitted one additional document, which was admitted without objection as AE D. DOHA received the transcript (Tr.) on April 28, 2009.

### **Findings of Fact**

Applicant's admissions to the SOR allegations, as well as those in response to the DOHA interrogatories (GE 3), are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 27 years old, received a bachelor's degree in Business Management in 2005. He plans to begin a master's program within two months after the hearing. He is unmarried and has no children. Applicant became employed by a defense contractor in May 2005, where he currently works as a Program Analyst-Junior. He received a security clearance in November 2005 (GE 1; 5; Tr. 19).

Applicant first drank alcohol during high school, at about 15 years old, because of peer pressure. He first became intoxicated at 16. He consumed alcohol every few months, and was intoxicated approximately two times during high school. He drank more frequently, about twice per month, after starting college in 2002 (Tr. 29- 34). In August 2002, he was charged with Possession of Alcohol by a Person under 21. He pled guilty,

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<sup>2</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

was placed on unsupervised probation for one year<sup>3</sup> and performed community service (GE 4; Tr. 38-40).

In August 2006, Applicant attended a concert with friends, and became intoxicated. He was stopped at a sobriety checkpoint after leaving the concert. He failed the field sobriety test and was arrested and charged with Driving While Intoxicated in State A. In October 2006, he pled guilty and served 2 days in jail, with the remainder of the 30-day sentence suspended. His State A driving privileges were suspended for one year. He also was ordered to attend alcohol awareness classes, and attended a six-week program from approximately November 2006 to February 2007. The classes consisted of videos and group discussions (GE 2, 3; Tr. 41-44).

In May 2007, in State B, Applicant had been drinking alcohol, and while driving afterward, he reached for a cell phone, and hit a parked car, which then hit the car parked in front of it (GE 2). He pulled over and notified residents of a nearby house, who contacted the police. He was charged with negligent driving, driving while under the influence of alcohol, driving while under the influence-per se, and driving while impaired by alcohol. He reported his alcohol-related arrests to his security officer. Three of the charges were not prosecuted, and Applicant pleaded guilty to Driving a Vehicle while Under the Influence of Alcohol. He was sentenced to 90 days incarceration, with 81 days suspended. Applicant spent six days in jail, with two days credited for good behavior. He was also sentenced to three years unsupervised probation, which ends in 2010. The unsupervised probation does not include a prohibition against consuming alcohol. Applicant's sentence included a 90 day-restriction on his driving license, but because he needed to be able to drive to his job, he chose to install a vehicle interlock system on his car for one year. The system prevents starting the car until the driver blows into a device that checks the driver's alcohol level. A reading of more than 0.01 prevents operating the car. The device also requires a periodic re-check while driving. Applicant completed the one-year period of vehicle interlock monitoring in about August 2008. (GE 2; 4; 5; Tr. 44-50).

Before the final disposition of the 2007 case, and before consulting with an attorney, Applicant decided to enroll in alcohol treatment (Tr. 46-47). His decision resulted from discussions with his parents, who informed him that his maternal grandfather had died because of his excessive alcohol consumption. Applicant does not want the same thing to happen to him (GE 2). He also recognized that he needed help:

At that time I didn't think I had an alcohol problem before the second DUI, and for me to get behind the wheel a second time, I needed some kind of mentoring or help to help me not do that ever again. (Tr. 47).

He participated in a 26-week treatment program that included random urinalyses, breathalyzer testing, alcohol and chemical dependency screening, and group sessions, but did not involve aftercare requirements. He also arrived 30 minutes before group

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<sup>3</sup> Applicant testified that he thought this probation ended when he reached 21 years old, which would have been in February 2003, 6 months after the incident (Tr. 39).

sessions so that he could engage in individual counseling (Tr. 61). He was diagnosed with alcohol abuse. Applicant attended from July 2007 to January 2008 (AE A; D).

Since Applicant's second DUI, Applicant consumed alcohol twice: he had approximately four beers in July 2007, before he attended counseling. He also had two glasses of wine at his brother's wedding in May 2008 (Tr. 33-35). He has never experienced blackouts, hallucinations or other withdrawal symptoms (Tr. 65). He admits that excessive alcohol affects his judgment, and his intent is to avoid driving at any time he has had alcohol, and to abstain from alcohol except for such important occasions. He talks with his friends about avoiding drinking and driving, sharing what he has experienced, the problems that resulted, and the thousands of dollars it has cost him in legal fees, court costs, and loss of work time. He volunteers to pick up his friends when they drink so they do not have to drive. His girlfriend does not drink alcohol. Applicant testified that when he drank, he was not involved in outside activities, but he now volunteers as a coach, working at least five days per week with a church softball team and a winter softball team (GE 2; Tr. 21; 50-51; 57-59; 63).

Applicant's performance review of January to December 2008 indicates that he is a hard worker who has grown in his position, taken on new responsibilities, and successfully managed contracts. His supervisor of more than three years noted that Applicant is dependable and, during the time she has supervised him, he has become a team leader who is a significant company asset (AE B; C).

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>4</sup> Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under the cited guideline.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>7</sup>

## Analysis

### Guideline G, Alcohol Consumption

The security concern about alcohol consumption is that "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 ¶ 21).

AG ¶ 22 includes the following relevant conditions that can raise security concerns and may be disqualifying:

- (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;
- (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;
- (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;

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<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Applicant was charged with possessing alcohol when he was under-age, and with DUI in 2006 and 2007. These incidents support application of AG ¶¶ 22(a) and 22(c). Moreover, AG ¶ 22(e) applies in part, because he was evaluated as an alcohol abuser. However, the evaluation was provided by a professional who is not a clinical social worker, but holds a master's degree in clinical alcohol and drug counseling.

AG ¶ 23 provides conditions that can mitigate security concerns:

- (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);
- (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 had two DUI convictions within a short period of time. They occurred in 2006 and 2007, between two and almost three years ago. The second DUI brought Applicant to the realization that he must change his behavior, and his subsequent actions in attending a four-month program on his own initiative, along with his modified alcohol consumption over the past two years, reflect favorably on his good judgment. AG ¶ 23(a) applies.

After his second DUI in a short period of time, Applicant has acknowledged that he had a problem with alcohol consumption. He reported his arrests to his security officer. He discussed the issue with his parents, and learned of a disturbing family history related to alcohol. Applicant entered a 26-week treatment program before the court required him to do so, and before an attorney advised him to do so. He has established a responsible pattern of alcohol consumption by drinking only twice in the past two years. AG ¶ 23(b) applies.

Applicant successfully completed the counseling program he voluntarily entered, and his two uses of alcohol in two years represent responsible modified consumption

consistent with a diagnosis of alcohol abuse. Applicant has also received a favorable report, though not a prognosis. In addition, he cannot receive complete mitigation because the counselor who evaluated him is not a licensed clinical social worker. Applicant's actions also earn partial mitigation under AG ¶ 23(d). I find for Applicant on Guideline G.

### **Whole Person Analysis**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole person concept. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant made serious missteps by increasing his alcohol consumption after college. His choices led to two DUIs in a short period of time. Fortunately, several events brought him to realize the gravity of his situation: the second DUI, learning of his grandfather's alcohol use and death, as well as his parents' advice. On his own initiative, Applicant sought and participated in a 26-week treatment program. Although he was diagnosed as an alcohol abuser, and is not required to be abstinent, he has consumed alcohol only twice in the past two years, showing serious commitment to avoiding the mistakes of the past. His honesty with his security officer demonstrates trustworthiness. Applicant's conduct in the future is unlikely to raise alcohol-related security concerns.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

## **Formal Findings**

Paragraph 1, Guideline G                      FOR Applicant

Subparagraph 1.a. - 1.d.                      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 allow Applicant access to classified information. Applicant's request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge