



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



In the matter of:

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ISCR Case No. 08-09236

Applicant for Security Clearance

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: Leslie McAdoo Gordon, Esq.

September 30, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for personal conduct, but not those raised under the guideline for alcohol consumption. Accordingly, his request for a security clearance is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 23, 2005. 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.

On March 18, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG).<sup>2</sup> Applicant signed his notarized Answer to the SOR on April 13, 2009, in which he admitted to allegation 1.c. and denied the remaining two allegations under Guideline G. He also denied allegation 2.a. under Guideline E. Applicant requested a decision before an administrative judge. Department Counsel was prepared to proceed on May 12, 2009, and the case was assigned to me on May 15, 2009. DOHA issued a Notice of Hearing on June 5, 2009 and I convened the hearing as scheduled on July 7, 2009.

During the hearing, Department Counsel offered five exhibits, Government Exhibits (GE) 1 through 5, which were admitted. Applicant testified and presented the testimony of two witnesses. Applicant exhibits (AE) A through N, were admitted. DOHA received the transcript (Tr.) on July 16, 2009.

### **Findings of Fact**

Applicant's admissions to the SOR allegations 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, 41 years old, received a bachelor's degree in computer information science in 1990. He has been married for 16 years and has four children, who are 4, 10, 11, and 14 years of age. Applicant worked as an associate for a defense contractor from 2003 to 2007. He received good performance evaluations at this company in 2004, with somewhat less satisfactory performance by 2006. He received several performance awards between 2003 and 2005. Subsequently, he worked as a systems engineer at another company from April 2007 to August 2008. He then accepted employment at his current company. During his initial interview, he informed the facility security officer (FSO) of his current company about his alcohol-related history (GE 1; AE D, K, L, M, N; Tr.59).

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

<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.

Applicant started consuming alcohol at about 15 years old, in approximately 1982, and was first intoxicated at the age of 15. He drank socially during the early years of his marriage. However, by his thirties, he was drinking at home every night. His use then increased substantially in his late thirties. According to his alcohol treatment records, when he began treatment, he had been drinking approximately one to two pints of vodka daily, and this had been his pattern for approximately ten years. He drank throughout the day on weekends. His longest period of abstinence was a week or two (GE 3; GE 4 at p.51; Tr. 32-33, 72-73).

During the period November 2007 through June 2008, Applicant received poor work performance evaluations. He did not turn in timely status updates. The fact that he worked off-site adversely affected his performance, so he was required to work at the office site. He arrived late and left early, instead of working a full day. He was specifically warned that he was required to work 8:00 am to 5:00 pm and to charge only the hours that he worked. He was given 30 days to improve his performance. Part of this period of poor performance occurred while Applicant was drinking daily, and before he attended treatment. When asked at the hearing to describe his occupational problems, which were noted in his alcohol treatment record, he said he did not know what they were. When asked if his alcohol use had affected his job performance, he said that it had not (GE 4, 5; Tr. 54, 75-77).

Applicant testified that when he was drinking he became withdrawn and had "anger issues." His wife reported to his treatment counselor that Applicant was aggressive and verbally abusive when drinking, and would become angry and yell at the children. At the hearing, she testified that as a result of this behavior, the children became cautious around him. Several members of Applicant's family, including his wife and children, arranged an intervention in February 2008. They met with Applicant, expressed their concerns, and described the negative effect his alcohol use was having on the family. His wife had reserved a place for him at a treatment center in another state. Applicant agreed to go, although the admission notes in his treatment record comment that Applicant had significant anger, did not seem motivated or willing to be there, and stated that he "would seek treatment for thirty days and not extend his treatment." During his interview with the investigator, he said that he "agreed to go for peace of mind for his family" and that he "stopped drinking for his family." He participated in a 30-day inpatient program from February to March 2008. He met with a counselor individually "a couple of times" but was involved primarily in group sessions (GE 2, 3; GE 4 at pp. 60, 72; AE A; Tr. 45-46, 68-71, 73-75, 80).

Applicant was diagnosed by a physician at the treatment center with alcohol dependence. He testified that his counselor explained the meaning of alcohol dependence to him. The counselor's Clinical Impression Report stated that Applicant was prone to relapse and "has been dinking [*sic*] in spite of negative consequences." It mentioned twice that he "is in need of structured environment." ((GE 4, pp. 12, 46; Tr. 78-79).

The treatment notes of February 29, 2008, stated that Applicant wanted to complete his assignments so he could “transition out of treatment as soon as possible.” (GE 4, p. 68). On March 14, 2008, the therapy notes indicate that the clinician,

informed [Applicant's wife] of the current concerns regarding her husband's decision to return home; client's wife stated she misses her husband and wants him home; this writer facilitated family contact which emphasized the importance of client following all discharge aftercare recommendations. Client will be supplied with an after care plan (GE 4, pp. 63-64).

The clinician recommended that Applicant attend intensive outpatient appointment, obtain an Alcoholics Anonymous (AA) sponsor, attend daily AA meetings, complete the 12-step program, continue individual therapy, and attend marriage counseling. The notes of March 21, 2008, show that the treatment center set up an appointment for Applicant at an intensive outpatient mental health center in his local area. (GE 4 at p. 60). Applicant cancelled the appointment for intensive outpatient treatment:

I did not go to that. I returned to my life and I felt good, that I didn't need it, the additional cost. I feel confident that I have a good control over where I was. I have broken the cycle of alcohol.” (GE 4, at p. 81).

Applicant admits that he is a recovering alcoholic. He has a support system to help him maintain sobriety including his wife, his church, and others he can call. After completing the inpatient treatment, Applicant attended AA meetings two to three times per week. He testified that currently, “I don't attend AA as often as I should. I would say probably once a month at least.” (Answer to SOR; Tr. 61, 80-81).

After completing alcohol rehabilitation in March 2008, Applicant met with an authorized investigator for the Department of Defense for a security clearance interview on July 9, 2008. The interview is reported in a document that Applicant received from DOHA. He was asked to review the report, verify its accuracy, and correct discrepancies, if any. Applicant submitted a signed and notarized statement indicating that the report accurately reflected his interview (GE 2).

During the interview, Applicant told the investigator that before treatment he drank approximately one pint of vodka daily, that he drank at home when he was alone, and that he became intoxicated daily. He stated that he did not think his drinking was out of control at that time, but his wife did. In addition, he told the investigator that his alcohol use did not cause any problems, or contribute to any problems. He also stated that it did not have any effect on his behavior. He testified, “Well, at the time, that's how I felt. ...So when they asked me when you were drinking did you have a problem, of course, I did not have. When I was drinking, everything was good. In hindsight, yes, I can agree with that, that I did have a problem.” He also told the interviewer that he had used alcohol responsibly because he used it at home, in a controlled setting, and it was a “responsible way of drinking.” Finally, when asked about alcohol diagnoses, Applicant

told the investigator that he “has not ever been diagnosed with an alcohol abuse problem or dependency.” He explained at the hearing that he thought the agent was asking if he had ever been diagnosed as alcohol dependent before the alcohol treatment they had just been discussing. When he received the report of the interview, he still thought the discussion was about whether or not he had been diagnosed with alcohol dependence before the intervention (GE 2; Tr. 62-65, 77-78).

Applicant was interviewed by a psychotherapist in his local area in June 2009 for “substance abuse evaluation in connection with his upcoming security clearance hearing.” The psychotherapist found that Applicant has been abstinent since February 18, 2008, responded positively to inpatient treatment, and attends AA regularly. She determined that Applicant's “sobriety is stable and his alcohol dependence is in remission.” Applicant testified that he talked with the psychotherapist for “a couple of hours” and that she did not conduct tests or review his medical records (AE B, C; Tr. 81-82).

Several of Applicant's family members submitted letters attesting to Applicant's trustworthiness and sense of responsibility, and noted his dedication to his country both in the military and as an employee of a defense contractor. Applicant's current FSO, who has known him for nine months, opined that Applicant has “one of the highest levels of honesty and integrity that I have witnessed in my 35 years of military and security training.” A friend, who holds a security clearance, submitted a letter attesting to Applicant's sobriety for 16 months and his ability to overcome his alcohol issues (AE D through I).

### **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>3</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 guidelines.

A security clearance decision resolves only the questions of whether it is clearly

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<sup>3</sup> Directive. 6.3.

consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial 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>5</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>6</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 disqualifying conditions:

- (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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

Applicant consumed alcohol to the point of intoxication daily, starting in his late thirties. The dates when his work performance suffered occurred, at least in part, during the time period when he was drinking significant amounts of alcohol every night. His alcohol use also caused him to be verbally abusive to his wife and children. His behavior led his family to perform an intervention to encourage him to obtain treatment.

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Applicant completed 30 days of inpatient treatment, where he was diagnosed with alcohol dependence by a physician. These facts support application of AG ¶¶ 22(c) and 22(d).

AG ¶ 23 provides the following relevant factors 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's alcohol-related behavior was frequent: he used alcohol for many years, and increased his use in his late thirties to the point that he became intoxicated daily between approximately 2006 and 2008. A significant amount of time has not passed since ending this behavior, as he has been abstinent since February 2008, only 18 months. Although his abstinence reflects well on his current good judgment, his use of alcohol was both frequent and recent. Only partial mitigation applies under AG ¶ 23(a).

Applicant acknowledges that he is a recovering alcoholic. He completed a 30-day alcohol treatment program in March 2008, where he was diagnosed as alcohol-dependent. As of the date of the hearing, he had not had alcohol for approximately 18 months and he plans not to use alcohol in the future. All of these facts weigh in Applicant's favor. However, several facts raise questions as to Applicant's real understanding and acceptance of the fact that he has a serious problem with alcohol. The treatment notes show that he sometimes appeared angry and unwilling to be at the treatment center, that he wanted to get the treatment done as fast as possible, and was unwilling to remain more than 30 days. Despite the counselor's opinion that he was not ready to leave treatment, Applicant did not remain at the center. The counselor

therefore recommended that Applicant continue with intensive outpatient treatment near his home, and even set up an appointment so that Applicant could do so. However, Applicant cancelled the appointment because he did not feel that he needed it. Moreover, he told the investigator at his security interview that he attended the program “for his family.” Applicant’s conduct indicates that he although he acquiesced to his family’s intervention, he did not fully acknowledge or accept the nature of his condition. AG ¶ 23(b) provides only limited mitigation.

As to AG ¶ 23(d), Applicant receives some mitigation for attending an alcohol treatment program, participating in AA frequently when he returned from the program, and abstaining from alcohol for the past 18 months. However, although Applicant completed the program, it is questionable whether he completed it *successfully*, given that he failed to follow his counselor’s recommendation to either remain in the program or continued the treatment at another facility. Moreover, he is not following his aftercare plan as he is not participating in AA as frequently as recommended. Finally, although he was evaluated by a qualified medical professional as being in remission, the evaluation provides no favorable prognosis for the future, as AG ¶ 23(d) requires. In addition, the evaluation is accorded less weight because it is based on a one-time meeting with a therapist who did not review Applicant’s medical records, and arrived at her opinion solely based on self-reporting by Applicant. Taking all the facts and circumstances together, the limited mitigation available is insufficient to overcome the disqualifying conditions. I find against Applicant on Guideline G.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern about personal conduct:

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.

The Guideline E allegations implicate the following disqualifying conditions under AG ¶ 16:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

The SOR alleges that Applicant deliberately falsified information that he provided to an investigator during his security interview of July 9, 2008, which implicates AG ¶ 16(b).



Applicant signed a statement that the report of the interview accurately reflected the statements he made. He was permitted to correct any information that he thought inaccurate, but made no corrections. When Applicant met with the security investigator, he was honest about his alcohol use, frequency, intoxication, and his own and his wife's feelings about it, and that his family intervened, and he was treated for 30 days on an inpatient basis. However, he stated that he had never been diagnosed with alcohol dependency, despite the fact that he received that diagnosis approximately four months earlier. He was aware of the diagnosis, because he testified that the counsellor explained the meaning of the term "alcohol dependence" as it applied to Applicant.

At the hearing, Applicant credibly testified that, when the investigator asked him if he had been diagnosed as alcohol dependent, he thought she was asking if he had ever had such a diagnosis in the past, before the treatment they had been discussing. If he had been trying to conceal his diagnosis, it is unlikely he would have openly admitted all the details he had provided to the investigator about his extensive history of drinking alcohol, his increased use to the point of daily intoxication, his family's intervention and his 30 days of alcohol treatment. Moreover, when Applicant was asked in a simple statement, in SOR allegation 1.c., whether he was diagnosed as alcohol-dependent, he admitted it. I find that Applicant did not deliberately conceal information about his diagnosis during the interview, but simply misunderstood the question that he was asked. As no deliberate falsification occurred, mitigation is not required.

### **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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense 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 is 41 years old, and has been consuming alcohol since he was a teenager. It became a problem when Applicant was in his late thirties. He was becoming intoxicated daily by drinking one to two pints of vodka each day. He was verbally abusive to his wife and children when intoxicated, and his work suffered. At his family's behest, Applicant attended a 30-day alcohol treatment program. Although he participated, his counselors noted his desire to leave as soon as possible. He completed the 30 days but, according to the treatment notes, he needed to continue treatment. He cancelled the appointment for the intensive outpatient treatment, which had been set up by the treatment center's counselor. His attendance at AA has decreased from several times per week to approximately once per month, and he admits that he does not attend as often as he should. Commendably, Applicant has abstained for the past 18 months. However, this length of time must be compared to the years he spent using alcohol to his own and his family's detriment. When taken together, Applicant's decreased attendance at AA, his lack of follow-through on his counselor's recommendation for further treatment, and his relatively short period of abstinence raise doubts about his acceptance and understanding of his condition.

I conclude Applicant has not mitigated the security concerns arising from the alcohol consumption guideline. Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance.

### **Formal Findings**

Paragraph 1, Guideline G	AGAINST Applicant
Subparagraph 1.a. - 1.c.	Against Applicant
Paragraph 2, Guideline E	FOR Applicant
Subparagraph 2.a.	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge