



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ) ISCR Case No. 08-09283  
 )  
 ) SSN )  
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 )  
 ) Applicant for Security Clearance )

**Appearances**

For Government: Stephanie Hess, Esquire, Department Counsel  
For Applicant: David Price, Esq.

December 31, 2009

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his most recent Security Clearance Application (SF 86), on February 22, 2008. On June 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline G. 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 acknowledged receipt of the SOR on July 16, 2009 and requested a hearing before an administrative judge through Counsel. I received the case assignment on September 18, 2009. DOHA issued a notice of hearing on October 1, 2009, and I convened the hearing as scheduled on October 28, 2009. The government offered Exhibits (GE) 1 through 12, which were admitted into the record without objection. Applicant testified on his own behalf and presented the testimony of his wife. He

submitted Exhibits (AE) A-F, without objection. I held the record open until November 6, 2009 for Applicant to submit additional character references. He submitted the references in a timely manner. The documents were marked as AE G, and submitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on November 5, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.b, 1.j, and 1.l with explanations. He admitted the other factual allegations in the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 46 years old. He is married with two adult children. Applicant served in the U.S. Air Force from 1981 until 2001, when he retired. He has been employed in his current job since November 2001 (GE 1). Applicant has held a security clearance since 1998.

Applicant first consumed alcohol at the age of 16. He drank beer with his friends during the summer. His mother abused alcohol during his childhood years. She married after his father died and Applicant was sent to live with his grandparents for a few years. When Applicant returned to live with his mother, she had remarried again. There was physical and verbal abuse in the home. Applicant assumed responsibility for his family's finances at the age of 14. He often had to locate her or her husband at a bar and bring them home. He left home to join the military when he was 17 years old.

Applicant's drinking habits, while he was in the military from 1981 until 2001, involved drinking at parties on weekends. He also explained that the military culture promoted social drinking with buddies on the weekends. He attended "hangar parties" every Friday evening which involved heavy drinking (Tr. 63).

In 1984, Applicant had an automobile accident while he was driving a rental car. He flipped his car and then decided to walk to a bar and have a mixed drink while waiting for the police to arrive (Tr. 86). He was referred by his command to a social action program but the command noted that there was insufficient evidence of problem drinking (GE 8). Applicant recalled that the program was a short seminar on the effects of alcohol.

In 1990, Applicant was at work and his supervisor suspected alcohol on his breath (GE 10). Applicant had been drinking the night before, but he denied that he had consumed alcohol while at work (Tr. 93). He volunteered to take a blood alcohol test at the time. Applicant is adamant that he never drank at work nor did alcohol ever interfere with his work. He explained that any documentation that he may have had concerning this event which occurred 20 years ago is no longer available, He does remember that he attended an alcohol education program (Tr. 89).

Applicant retired from the military in 2001. He had a difficult transition to civilian life. He explained that he drank frequently and to the point of intoxication. He was under stress due to work issues and problems with his two daughters who did not need him as much as when they were younger (Tr. 95).

On June 9, 2002, Applicant attended a bachelor party. He consumed tequila, rum, whiskey, and beer over the course of a few hours. While driving home, Applicant struck the rear of an automobile (GE 6). In 2002, Applicant was charged with careless driving, driving under the influence of alcohol (DUI), and driving while ability impaired. He was found guilty of Count 1 and the sentence was deferred. He pleaded guilty to Count 3 and was sentenced to 24 months of unsupervised probation (GE 6). He was ordered to attend alcohol education and therapy. Count 2 was dismissed.

In 2003, Applicant received court-ordered outpatient treatment for alcohol abuse in connection with his conviction for driving while impaired. He describes it as more an awareness training or education rather than treatment. He attended 30 class hours and some Alcoholics Anonymous (AA) meetings. He completed all the conditions of his probation (GE 2).

On September 8, 2006, Applicant was arrested and charged with a DUI and DUI Per Se. He pleaded guilty to Count 1 and was sentenced to 18 months probation to include alcohol therapy. Count 2 was dismissed. Applicant went to a bar and consumed three beers and three alcoholic beverages. He had something to eat and then chose to drive home. He was stopped by the police and admitted to drinking that evening. Applicant explained that he was under great stress at the time due to family problems. His one daughter had been in an automobile accident and his other daughter was in an abusive marriage (GE 3).

As a result of the 2006 DUI, Applicant completed 86 hours of therapy and 96 hours of community service. He attended AA meetings, and he completed a level II alcohol education program. Applicant was ordered to refrain from drinking alcohol for one year. He was on unsupervised probation until June 2008 (GE 7).

In March 2007, Applicant admitted himself into an inpatient treatment program. He wanted to quit drinking. He notified his employer, took time off from work and completed the program on April 16, 2008. He paid for this program on his own. He underwent a medical evaluation, received counseling, and education treatment. He availed himself of a support group and continued his sobriety. Applicant's diagnosis was alcohol dependence (GE 4). He did not drink after that time. Applicant acknowledged that he attended a dinner in 2008 and accidentally picked up someone's glass. He believed it was water but when he tasted it, he knew it was wine. He reported that he has not drunk to the point of intoxication since 2007 (Tr. 68).

Applicant drank a beer before going to an AA meeting in June 2008 (Tr. 43). He told his wife about the incident. He also knew that it would be detected at the meeting. He realized that this was self-destructive behavior (Tr. 70). After that, he decided to use

Antabuse (Tr. 70). Applicant uses Anatabuse whenever he feels stressed. This deters him from drinking alcohol because he gets violently ill if he consumes alcohol while on the medication. He recounted an incident in 2007, when he was on the medication and had a reaction from a sip of beer. Applicant does not frequent bars. He does not keep any alcohol in his home.

Applicant received a favorable prognosis in January 2009 from his counselor who is certified as an alcohol abuse counselor. Applicant attends AA several times a week. He is monitored on Antabuse. He has shown great improvement. He has followed his counselor's recommendations for recovery (GE 2). He has attended family counseling. He looks to his family for support and also the AA members. He is actively working the steps of recovery in AA. He also sought help from the Employee Assistance Program (EAP) at work. He told his supervisor at work about his alcohol problem. Applicant has earned a one-year coin from AA for his abstinence (AE C).

Applicant has used an Ignition Interlock Program for a year and a half - since the last DUI (AE A). He wants to keep it in the car indefinitely. The court-ordered period expires in August 2010 (Tr. 73).

Applicant attends college classes in computer security (AE F). He hopes to obtain a degree so that he can improve his skills. He spends time with his family. He talks to his wife about problems instead of isolating himself and drinking (Tr. 65).

Applicant is a system administrator for a contractor. He is a trusted, reliable professional. He adapts to situations and has an excellent working relationship with customers and colleagues. He is honest and hard working. Applicant is remorseful about his personal issues with alcohol. He is committed to his treatment and has advised his employer about his situation (AE G).

Applicant submitted six character references, including two from his daughters. He is described by colleagues as a quality producer. His work ethic is exceptional and he is meticulous in his work.

Applicant is recommended and considered a valuable asset to the organization. He is efficient, competent and his communication skills are excellent. He is dedicated to his family. In social situations, he has not consumed alcohol.

## **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 required 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, "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 conditions that could raise a security concern 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,” 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 two alcohol-related driving incidents (2002 and 2006). He admitted driving with impaired judgment due to the alcohol he consumed, and he admitted that he consumed alcohol, at times to excess and to the point of intoxication for many years until 2007. Thus, AG ¶ 22 (a) and (c) apply.

In June 2007, Applicant was diagnosed with chronic alcohol dependence by a licensed clinical social worker during the court program. Thus, AG ¶ 22(e), “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker (LCSW) who is a staff member of a recognized alcohol treatment program” applies.

AG ¶ 23 provides conditions that could 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);

(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 has two alcohol-related driving incidents. Since 2006, he has not had any other alcohol-related driving incidents. Applicant attended alcohol classes after his 2002 and 2006 incident. He underwent inpatient treatment in 2007. He has not drunk to

the point of intoxication since 2007. He has abstained from drinking since drinking one beer in June 2008. He has abstained from drinking and driving for almost three years. He has received counseling and treatment in a court program after the incident in 2006. Applicant has acknowledged that he abused alcohol in the past but now he is committed to a different life style. Applicant attends AA of his own accord. Applicant maintains that he will not drink in the future. He has received a favorable prognosis from an LCSW. He continues to receive family counseling whenever necessary. He is monitored on Antabuse. He intends to use the ignition interlock system in his car after the court-ordered time expires in 2010. He attended the EAP program and advised his supervisor of his alcohol problem. I considered his promise not to consume alcohol to be candid, sincere, and credible. Future alcohol consumption is unlikely to occur. He has established a pattern of abstinence. Applicant has mitigated the alcohol consumption concerns under AG ¶¶ 23(a), (b), and (d).

### **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. Applicant served in the Air Force from 1981 until his retirement in 2001. Applicant held a secret clearance for many years. He has no incidents or issues with protecting classified information. Applicant has excellent references from his employer. He has been convicted of two alcohol-related driving offenses. Since his most recent offense in 2006, he completed a court-ordered treatment program and stopped his alcohol consumption. He is monitored by Antabuse and has an ignition interlock system in his car. He was diagnosed recently by a licensed social worker with alcohol dependence. He has been abstinent since having one beer in 2008. He has a good prognosis. He involved himself in AA and uses it for support. Applicant has had no other legal problems during his life. He availed himself of the EAP

