



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



In the matter of: )  
)  
) ISCR Case No. 08-10735  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Department Counsel  
For Applicant: John F. Mardula, Esq.

March 25, 2011

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline G, Alcohol Consumption. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On June 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 19, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2010. DOHA issued a notice of hearing on October 5, 2010, and the hearing was convened as

scheduled on October 27, 2010. The Government offered Exhibits (GE) 1 through 10, which were admitted into evidence without objection. The Government's exhibit list was marked as Hearing Exhibit (HE) I. Applicant testified, called one witness, and offered exhibits (AE) A through X, which were admitted into evidence without objection.<sup>1</sup> Applicant's exhibit list was marked as HE II. Additionally, Applicant submitted two post-hearing exhibits that were admitted into evidence as AE Y and Z. DOHA received the hearing transcript (Tr.) on November 5, 2010.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations except for a discrepancy related to SOR ¶ 1.e concerning the location of his treatment. I have adopted these admissions in my findings of fact, and after a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. He is divorced and has two children. He contributes to both daughters' college costs. He has worked as a software specialist for a defense contractor for 10 years. He has a high school diploma and some college credits. He has held a security clearance since 1996.<sup>2</sup>

Applicant's conduct raised in the SOR includes: (1) consuming alcohol, to the point of intoxication, from about 1983 (when he was 16 years old) to 2009 (admitted); (2) an arrest in January 2008, for a second offense driving while intoxicated (DWI) charge (admitted); (3) receiving treatment for alcohol abuse from June 2008 through February 2009 from an alcohol treatment program (admitted); (4) an arrest for felony hit-and-run and resulting guilty plea to reckless driving charge in November 2007 (admitted); (5) receiving treatment for alcohol issues from April 2004 through September 2004 from an alcohol treatment program (admitted); and (6) arrest and resulting guilty plea to DWI in January 2004 (admitted).

When Applicant was around 16 years old, he began consuming alcohol. Most of the time he drank beer, but sometimes he also drank liquor. He drank about three beers at weekend parties and other social events. This pattern of drinking continued up through the time his children were born. He stopped drinking completely when they were infants. He resumed drinking alcohol again in the mid-1990's. During this time, Applicant's drinking pattern included going to bars and nightclubs every other day, either alone or with friends, and consuming alcohol. He would drink alcohol at the rate of 1.5 drinks per hour. During football season, he would spend approximately 10 hours at the bar on weekends. He drank as much as 12 beers on at least one occasion. During the weekday, he would spend about three to four hours at the bar after work. He would drink four to six drinks, mostly beer and sometimes a shot of liquor, on these

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<sup>1</sup> AE A through L were also attached to Applicant's answer to the SOR.

<sup>2</sup> Tr. at 20-23, 45; GE 1.

occasions. He would drive himself home after these drinking sessions. He was most likely over the legal limit when he drove home after these sessions.<sup>3</sup>

Sometime in January 2004, Applicant drove from work and stopped at a bar near his home. He spent three to four hours there and consumed about two mixed drinks and five or six beers. He left the bar around 9:30 or 10:00 pm and started home. Approximately 100 yards from the bar, he stopped at a red light. He fell asleep while stopped at the light, his foot slipped off the brake, and he rolled into and hit the car in front of him. The police were called. He was suspected of drunk driving and given field sobriety and breathalyzer tests. He failed the tests and was arrested for DWI. He pled guilty to DWI and was sentenced. As part of his sentence, he was required to complete the Alcohol Safety Action Program (ASAP). His driver's license was also suspended for one year.<sup>4</sup>

In 2004, as part of his ASAP requirement, Applicant saw an alcohol-abuse counselor. He attended 17 or 18 group counseling sessions. He does not recall receiving a diagnosis and he did not see the final evaluation by the counselor. The counselor's evaluation did not state a diagnosis for Applicant, but stated in his final report, he believed Applicant showed "good to fair" insight into his alcohol involvement.<sup>5</sup>

In November 2007, Applicant stopped at the same bar that he was at prior to his 2004 DWI charge and had three beers and a shot of liquor over the course of two to three hours. He then left the bar and drove home. On his way home, he ran into some road construction. He then had a fender bender with another vehicle. He spoke to the other driver and thought they had worked out a settlement arrangement and then he left the scene. He did not give the other driver his insurance information. Several days later, he was arrested for felony hit-and-run. The charge was reduced and he pled guilty to reckless driving. Applicant admitted he left the scene before the police arrived because he had been drinking.<sup>6</sup>

In January 2008, Applicant went to his favorite bar after work, stayed for about three hours and consumed four beers, one shot of liquor, and one mixed drink while he was there. He then drove home. He was stopped by a police officer because he crossed a center line. His blood alcohol content registered a .16 on the breathalyzer machine. He was arrested for DWI (second within five years). He pled guilty and was sentenced. His sentence included three years of probation, through April 2011. His driver's license was suspended for three years, although he was able to get a restricted license with an

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<sup>3</sup> GE 4.

<sup>4</sup> GE 4; Tr. at 48-49.

<sup>5</sup> GE 9; Tr. at 50, AE G.

<sup>6</sup> GE 4; 51-52, 72-73.

interlock device for his vehicles. Once again, he was ordered by the court to attend ASAP classes.<sup>7</sup>

Starting in June 2008, as part of his ASAP requirement, Applicant saw a licensed clinical social worker (LCSW) about his alcohol problem. He was diagnosed as an alcohol abuser. He attended 16 individual counseling sessions ending in October 2008. His prognosis was noted as “guarded”. Even though he completed his ASAP requirement, he was still on probation. In December 2008, Applicant was called in by his probation officer to give a breath sample. One of the conditions of his probation was total abstinence from alcohol. He tested positive for alcohol in his system. He admitted to his probation officer to drinking three beers the night before in violation of his probation. He was sent back to the LCSW he had previously seen. He admitted to his counselor that he drank on several more occasions during his probation. He also attended five additional counseling sessions. In a session held on December 16, 2008, the LCSW wrote this note about Applicant: “I am not so sure how committed he is to making things be different than they are”. The last treatment update document in the record from the LCSW is dated December 29, 2009, and his prognosis was still “guarded”. In his last treatment session on January 12, 2009, the LCSW wrote this note about Applicant: “I talked to him directly about drinking—he says that he might continue to drink when he is off probation”. The LCSW also stated: “I have to admit, that I do not have any idea whether he is continuing to drink or not”.<sup>8</sup>

Applicant testified that he last drank alcohol on December 3, 2008, the night before he was called into his probation officer’s office to give a breath sample. However, in his affidavit dated February 3, 2009, Applicant stated that from November 2008 through the holiday season of 2008, he consumed about three beers per week at bars and holiday parties. He further stated his consumption since January 9, 2009, was about one beer every two weeks. Finally, he stated his last drink was one beer on February 1, 2009. Applicant knew all of these drinking episodes were violations of his probation.<sup>9</sup>

Applicant admitted he is an alcoholic and is currently attending Alcoholics Anonymous (AA) meetings about two times per week. He is not working the AA steps and has never had an AA sponsor. He signed a statement of intent that he will not abuse alcohol or drink and drive in the future. His probation officer noted that he completed his substance abuse education and treatment. Applicant is supported by character testimony and several character letters attesting to his honesty, trustworthiness, and reliability. Applicant is viewed as a valued employee and loyal

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<sup>7</sup> GE 4; Tr. at 52-55.

<sup>8</sup> GE 10; See Diagnostic and Statistical Manual (DSM) IV 305.00.

<sup>9</sup> Tr. at 47, 83-85, 91-93; GE 4.

friend. He is also received numerous performance awards and excellent job appraisals from his employer.<sup>10</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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.

Under 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."

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 that an applicant may deliberately or inadvertently fail to 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

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<sup>10</sup> Tr. at 32-39, 60, 89-97; AE B, D, J-Z.

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. Several are applicable in this case:

- (a) alcohol-related incidents away from, such as driving while under the influence. . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependant;
- (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;
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant's DWI arrests in 2004 and 2008 and his 2007 reckless driving arrest were all alcohol related incidents away from work. His drinking habits of attending the same bar, drinking heavily, and repeatedly driving home while intoxicated show a pattern of habitual or binge consumption. In October 2008, Applicant was diagnosed by a licensed clinical social worker from the state's ASAP program as an alcohol abuser. In December 2008 through February 2009, he continued to drink alcohol after completion of his alcohol treatment program and while he remained on probation. All the disqualifying conditions listed above apply.

I have also considered all of the mitigating conditions for Alcohol Consumption under AG ¶ 23 and especially considered the following:

(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's last alcohol-related arrest was in 2008, however, his drinking continued through February 2009 in violation of his terms of probation. Although over two years have past since his last arrest, Applicant's history of drinking while driving, failed alcohol counselling, and questionable credibility concerning when he stopped drinking cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply. Applicant acknowledges his alcoholism and claims to have established a pattern of abstinence since December 3, 2008. That claim is contradicted by his earlier admissions of drinking beyond that time. I am not convinced Applicant has established a pattern of abstinence that is sufficient under these facts. AG ¶ 23(b) does not apply. There is no evidence that Applicant is currently undergoing counselling or treatment, but there is evidence that he has a history of previous treatment and relapse. AG ¶ 23(c) does not apply. Applicant completed outpatient alcohol counselling in 2004, relapsed, then re-entered counselling in 2008 where he was placed back in the program after initially completing it when he tested positive for alcohol use by his probation officer. His prognosis from his LCSW was "guarded". Although he is currently attending AA and he successfully completed his alcohol treatment in August 2010, he was not given a favorable prognosis. AG ¶ 23(d) partially 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 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. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I have considered Applicant's outstanding service to his employer. I also considered the character evidence offered by his coworkers. I considered his alcohol recovery efforts and his current participation in AA. However, I am concerned with Applicant's apparent inconsistency about when he stopped drinking and his admitted probation violations. I fail to see that Applicant has changed his lifestyle in any meaningful way so that future alcohol related incidents are less likely to occur. Applicant's actions raise questions about his reliability, trustworthiness, and ability to protect classified information.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the concerns raised under the Alcohol Consumption guideline.

### **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
Subparagraphs 1.a – 1.f:	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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Robert E. Coacher  
Administrative Judge