



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



In the matter of: )  
)  
) ISCR Case No. 09-02318  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

September 30, 2010

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On November 20, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) as part of his employment with a defense contractor. On December 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for personal conduct and alcohol consumption, Guidelines E and G respectively. 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 adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on December 16, 2009.

Applicant answered the SOR on December 23, 2009. In his response, he admitted all eight allegations of alcohol consumption under Guideline G. However, in his

explanation, Applicant stated that he only had one driving while intoxicated incident and alcohol treatment and that was in 2003. His response to SOR 1.b and SOR 1.c, alleging a driving while intoxicated offense and alcohol treatment in 2002 is considered a denial rather than an admission. Applicant admitted the two allegations under Guideline E but stated his wrong answers were not intentional. Accordingly, his responses to the two allegations under Guideline E are considered denials. He requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on May 13, 2010, and the case was assigned to me on July 2, 2010. DOHA issued a Notice of Hearing on July 7, 2010, for a hearing on July 27, 2010. I convened the hearing as scheduled. The Government offered six exhibits marked and admitted without objection as Government exhibits (Gov. Ex.) 1 through 6. Applicant testified on his behalf. DOHA received the transcript of the hearing (Tr.) on August 3, 2010.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted some of the allegations under alcohol consumption. His admissions are included in my findings of fact.

Applicant is 28 years old and is married with one 15-month-old child. He has been a structural technician working on military aircraft for a defense contractor since June 2008. He served six years on active duty in the Air Force from October 2000 until October 2006. He received an honorable discharge as a senior airman (E-4). He was unemployed for about a year after leaving active duty. He attended and completed a technical school from June 2007 until he started working for the defense contractor in June 2008. He moved to a new location in June 2008 to accept the position with the defense contractor. He worked part time while attending school. He received and held a security clearance since 2001. He is now enrolled in college courses studying for a degree in technical management and aeronautics. (Tr. 16-20; Gov. Ex. 1, e-QIP, dated November 20, 2008)

Applicant has a history of alcohol consumption, sometimes to the point of intoxication, since 1996. He started drinking beer when he was 14 years old. His consumption from age 14 to age 16 was minimal and on rare occasions. From age 16 to age 18, his alcohol consumption increased to about a beer a month. From age 18 to age 21, he was a minor on military active duty and his alcohol consumption was minimal. When he turned 21 in 2003, his alcohol consumption increased to drinking on weekends and sometimes getting intoxicated. He was drinking to the point of intoxication about six or seven times a year. He admits drinking too much alcohol from January 2003 until November 2003 (Tr. 20-24)

Applicant was stopped for driving while intoxicated (DWI) in November 2003. He received disciplinary action under Article 15, Uniform Code of Military Justice, by his commander. He attributes his excessive consumption of alcohol to having the wrong

friends. As part of the action following this DWI offense, Applicant spent 28 days in an in-patient treatment program. He was diagnosed as alcohol dependent by a physician. After the in-patient treatment, he received outpatient aftercare, to include group counseling and attendance at Alcoholic Anonymous until September 2004, when he stopped attending the sessions. (Tr. 24-29; Gov. Ex. 5, Clinical records, various dates)

Applicant did not drink alcohol and stayed sober for about six months until early 2005 when he went on a fishing trip with a friend and had a few beers. He did not have any problems with his drinking and thought at the time that he could manage drinking alcohol. He continued to drink alcohol on occasion but did not increase his consumption of alcohol until the early summer of 2006. At the time, he was under stress from his job and the prospects of separating from the military. He believes he turned to alcohol to help relieve the stress. He was drinking over 80 ounces of beer and some whiskey every day. In August 2006, he realized he needed help. He was to separate from the military in about two months. His supervisor assisted him in being referred to an in-patient alcohol treatment program. He felt he went to the program, not because he was consuming too much alcohol, but because he was under stress. He was initially placed in a detoxification treatment because it was a weekend and patients are not admitted to the in-patient treatment until Monday. The in-patient program was again a 28-day program with both group and one-on-one counseling. He was again diagnosed as alcohol dependent by a physician. Applicant told the counselors that his parents were alcoholics, but he did not think alcohol was a problem for him. Applicant does not believe he was alcohol dependent but may have been an alcohol abuser at the time. (Tr. 29-36; Gov. Ex. 6, Clinical Records, various dates)

Since leaving the in-patient treatment in September 2006, Applicant has only consumed alcohol on occasion, about once a month. He married in June 2008 and has a child. He does not believe he is like his alcoholic parents who thought only of themselves. He lives for his wife and child. He has learned how to work with and control stress. His wife, a hospice nurse, assists him in relieving any stress factors he may have. There is no evidence to show excessive alcohol consumption after September 2006. Applicant admits drinking alcohol after 2006 but he does not admit drinking alcohol to excess after September 2006. (Tr. 36-42)

Applicant completed his security clearance application on November 20, 2008, and answered "NO" to question 23(e), which asked within the last seven years had he been subject to court-martial or other disciplinary proceedings under the Uniform code of Military Justice. Applicant answered "NO" to question 25 on the security clearance application, which asked if in the last seven years had his use of alcoholic beverages resulted in any alcohol-related treatment or counseling. Applicant received a nonjudicial punishment under the Uniform Code of Military Justice in November 2003, and been referred for alcohol-related treatment in 2003 and 2006. Applicant previously completed a security clearance application when he was on active duty in the Air Force.

Applicant stated he did not incorrectly answer the questions with the intent to deceive or hide his nonjudicial punishment or alcohol-related treatment. Since his

commander had returned the non-judicial punishment record to him and told him it would not be in his records, he believed the proceedings had been expunged from his records. Since the proceedings were not in his record, he also believed he did not have to report the alcohol-related treatment that resulted from the proceedings. As to the 2006 alcohol-related treatment, Applicant initially stated that he did not list it because he voluntarily entered the treatment to manage his stress and not his alcohol consumption. He also noted that he inadvertently forgot about the treatment. He remembered it immediately after an interview with a security investigator. He called her that afternoon and told her about the treatment that he had just remembered. A few days later, the investigator returned with medical release forms for him to sign. He never intended to conceal the 2006 treatment but merely forgot about it. (Tr. 42-47)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 for 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 about potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Alcohol Consumption**

Applicant admitted six of the eight alcohol consumption security concerns. He did not admit the incident that is alleged to have happened in November 2002. He states the incident is properly alleged in another allegation as happening in 2003. There was no information presented to indicate an alcohol-related offense and alcohol-related treatment in 2002 as alleged in SOR 1.b and SOR 1.c. Excessive alcohol consumption is a security concern because it 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)

Applicant's admission to drinking alcohol, at times to excess from 1996 until 2006, to an arrest for DWI in November 2003, and to a diagnosis of alcohol dependence in 2003 and 2006 by a physician, raise the following Alcohol Consumption Disqualifying Conditions (AC DC) AG ¶ 22(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); AC DC AG ¶ 22(c) (habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuse or alcohol dependent); AC DC AG ¶ 22(d) (diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence); and AC DC AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program).

I considered Alcohol Consumption Mitigating Condition (AC MC) AG ¶ 23(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) and determine that it applies. While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of recurrence, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant admits that he was arrested and convicted of driving while intoxicated in 2003. He also admits receiving in-patient treatment and a diagnosis of alcohol dependence in 2003 and 2006. He admits to heavy consumption of alcohol prior to his 2006 in-patient treatment. Applicant has no alcohol-related incidents since his diagnosis and treatment in 2006. Since that time, he has completed a technical school, married, became a father, and moved to another location for a position with a defense contractor. He is no longer immature without any direction. This mitigating condition applies since the significant period of over four years has elapsed since the last alcohol-related treatment, and his changed lifestyle indicated sufficient changed circumstances to conclude that Applicant has shown reform and rehabilitation. These new circumstances show it is unlikely his previous alcohol consumption problems will recur. His present circumstances and lifestyle show that his past conduct does not reflect adversely on his current reliability, trustworthiness, and good judgment.

I also considered AC MC AG ¶ 23(b) (the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)). The mitigating condition partially applies. Applicant acknowledges that in the past when he was young and immature, he had a problem with alcohol. However, he is now mature, drinks sparingly, has a family that supports him, and a good position with a defense contractor. He completed in-patient alcohol treatment, and has not had a relapse of alcohol-related incidents in over four years. He established a clear pattern of modified alcohol consumption. In total, Applicant has presented sufficient information to meet his burden to establish that his past alcohol use is under control and his alcohol consumption does not reflect now on his reliability, trustworthiness, and good judgment. Applicant has mitigated security concerns for alcohol consumption.

## **Personal Conduct**

A security concern is raised because personal conduct involving questionable judgment, untrustworthiness, unreliability, 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 (AG ¶ 15). Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If an applicant conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government.

Applicant answered "No" to a question concerning disciplinary actions under the Uniform Code of Military Justice and that his consumption of alcohol led to alcohol-related medical treatment in 2003 and 2006. His failure to acknowledge his nonjudicial

punishment and his in-patient alcohol-related medical treatments raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant denied intentional falsification. Applicant credibly testified that when he completed his security clearance application he did not include his nonjudicial punishment in response to question 23 because the documents concerning the disciplinary action were returned to him by his commander who informed Applicant it would not be on his record. Applicant believed that the document had been expunged from his record. Since the disciplinary action was not in his records, he believed that he did not have to list the resulting 2003 in-patient alcohol-related medical treatment. As to the 2006 alcohol-related treatment, he credibly testified that he simply forgot the treatment when he completed the form. After being questioned by a security investigator, he remembered the incident, called the investigator to report it thus permitting her to request a release of his medical records. Applicant's explanation raises Personal Conduct Mitigating Conditions (PC MC) AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts), and PC MC AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment).

While the questions on the security clearance application are straightforward, the focus of most people is to complete the form as quickly as possible. They are not legally trained or sophisticated at interpreting documents, and can honestly misinterpret the need to include some required information. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material with intent to deceive the Government. It is deliberate if it is done knowingly and willfully. Applicant had an honest belief that the disciplinary action and the 2003 in-patient treatment were expunged from his records, and need not be listed on the form. Also, he did not intend to deceive when he failed to initially mention the 2006 treatment. He revealed it as soon as he remembered it, permitting the Government to investigate the treatment. I find Applicant responded to the questions as best he could without intent to deceive. I find for Applicant as to Personal Conduct.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an 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.

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant's over six years of active duty service in the Air Force. I considered that Applicant completed two alcohol-related in-patient medical treatments. I also considered Applicant's admission of heavy alcohol consumption even though it led to only one driving while intoxicated offense. I also considered that it has been four years without incident since Applicant's last alcohol-related treatment, his 2006 in-patient alcohol-related treatment. I conclude that this was sufficient time without alcohol-related incidents along with changed life circumstances to indicate reform and rehabilitation. I find for Applicant on the alcohol-related security concern allegations. I also find Applicant did not deliberately with the intent to deceive fail to include his nonjudicial punishment and alcohol-related medical treatment on his security clearance application. Overall, on balance the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his personal conduct and alcohol consumption.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge