



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-03836
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: James E. Stein, Esquire

July 7, 2010

**Decision**

HENRY, Mary E., Administrative Judge:

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

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on December 23, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G and H on December 4, 2009. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR at his office on January 11, 2010, 13 days after he submitted his answer to the SOR, through counsel and in writing, on December 28, 2009. Applicant requested a hearing before an administrative judge.

DOHA received the request. Department Counsel was prepared to proceed on March 22, 2010, and I received the case assignment on March 23, 2010. DOHA issued a notice of hearing on March 31, 2010, and I convened the hearing as scheduled on April 27, 2010. The Government offered three exhibits (GE) 1 through 3, which were received and admitted into evidence without objection. Applicant and four witnesses testified on his behalf. He submitted three exhibits (AE) A through C, which were received and admitted into evidence without objection. I held the record open until May 3, 2010, for Applicant to submit additional matters. Applicant timely submitted two exhibits, AE D and AE E, without objection. The record closed on May 3, 2010. DOHA received the transcript of the hearing (Tr.) on May 4, 2010.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.f and 2.a-2.c of the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 24 years old, works as a material handler for a Department of Defense contractor. He began this job in January 2009. In his first performance review dated November 11, 2009, his supervisor rated him as a solid performer.<sup>1</sup>

The facility security officer, who has worked in security for 55 years, testified. He met Applicant when Applicant began the security clearance process in January 2009. Applicant revealed derogatory information as he completed his e-QIP, including his drug and alcohol use. In his view, Applicant was 100% honest with him about his past conduct. This witness believed in Applicant and knew about Applicant's rehabilitation for alcohol and drug use. Random drug tests performed on Applicant did not reveal a drug usage problem. This witness spoke with Applicant's supervisors who advised him that Applicant was a valued and excellent employee. In this witness's professional opinion, Applicant was not a security risk.<sup>2</sup>

Applicant serves as an employee department representative on a safety program committee. The operations manager, who is the management representative and was a hearing witness, interacts with Applicant on this committee. In his opinion, Applicant is one of the most valued members of the team because Applicant brings enthusiasm, energy, and commitment to the process. The operations manager not only interacts with Applicant on this committee, but casually interacts with him regularly at work and has occasionally socialized with Applicant outside of work. His contacts with Applicant never involve alcohol or drugs, and to his knowledge Applicant has not used alcohol. In the last 15 months, he has not observed any behavior or conduct by Applicant which

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<sup>1</sup>GE 1; Attachment to SOR response; Tr. 71.

<sup>2</sup>Tr. 60-64; Attachment to Response to SOR.

indicates drug or alcohol use or which would give him concern about Applicant holding a security concern. He views Applicant as a responsible individual, who is honest and trustworthy.<sup>3</sup>

From October 2007 until January 2009, when he started his present position, Applicant worked for a city government. The Human Resources Director for the City testified for Applicant. He has known Applicant for 10 years, as Applicant and his daughter are friends. He is aware that Applicant and his daughter maintained past friendships with individuals who used drugs and alcohol, but neither Applicant nor his daughter are friends with these individuals now. Before he hired Applicant to work for the City, City policy required Applicant to undergo a pre-employment drug test, which Applicant passed on October 24, 2007. The City subjected Applicant to two additional random drug tests in May 2008 and July 2008. Applicant passed both drug tests. While employed, Applicant came to this witness on his own and asked for assistance with some alcohol and drug issues. The witness referred Applicant to the City's Employee Assistance Program. Because Applicant came to him on his own, all information remained between Applicant and the doctor. Applicant is eligible for rehire. He described Applicant as a truthful and honest person in their relationship. The witness is proud of Applicant's accomplishments, stating that Applicant has come a long way and made positive changes in his behavior. He is aware that Applicant underwent drug and alcohol treatment. His current contacts with Applicant are generally limited to one or two telephone calls a month.<sup>4</sup>

A neighbor of Applicant's mother testified for Applicant. This witness has known Applicant for 11 years and is aware that Applicant had a drug and alcohol problem. When Applicant was involved with alcohol and drugs, Applicant did not come to his mother's home, as Applicant knew that, if this witness saw him, the witness "would get on him about it," meaning the witness would be telling Applicant to straighten out his life. The witness described Applicant as a responsible, trustful, and moral person. Applicant told the witness about his alcohol dependence and drug use. The witness sees Applicant four or five times a week and has noticed a significant change in Applicant's behavior since 2008.<sup>5</sup>

Applicant lives with his fiancée and they have a small daughter. Applicant attended college for a short time, but did not finish. He stated that when he was younger, he was into his social life and not his education. He plans to return to college and complete his education. He is a committee member for local charity organization and has hosted three fundraisers for this organization. He goes to church and works out at the gym.<sup>6</sup>

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<sup>3</sup>Tr. 50-59.

<sup>4</sup>*Id.* 29-41.

<sup>5</sup>*Id.* 43-48.

<sup>6</sup>*Id.* 76, 80-81, 83-84.

As a young child, Applicant had exposure to alcohol. When he got his driver's license, he quit playing sports,<sup>7</sup> and started spending time with the wrong crowd. With his new high school friends, he started drinking beer regularly in 2001. He usually consumed the beer two to three times a week at parties and bars with his friends. In 2005, after a party, the police stopped him, gave him a breathalyzer test on the roadside, which he failed, and another test at the police station, which he passed. The police charged him with driving under the influence (DUI). When he appeared in court 30 days later, the court dismissed the charges. He drank beer, sometimes to the point of intoxication, until May 2008, when he stopped drinking. In the last two years, he has consumed one beer at a New Year's Eve party in 2008.<sup>8</sup>

In 2001, Applicant smoked his first marijuana cigarette at a party. In 2003, he first snorted cocaine at a party. He continued to use both drugs socially until 2005, when he stopped any use of cocaine. He smoked marijuana until 2007. While using these drugs, he purchased these drugs for his use, but did not sell, supply, or manufacture these drugs. He stopped his drug use because he did not want to do them anymore, he felt depressed, and he felt like a failure. He advised the security investigator that he did not have any intentions of using drugs in the future. At the hearing, he indicated a willingness to sign a document, agreeing to be terminated from his job if he used drugs in the future. He also stated he was willing to do this to keep his security clearance and job. After the hearing, he signed a statement agreeing to the loss of his clearance should he use drugs, or alcohol, and that there will be no recourse should he lose his clearance and job.<sup>9</sup>

Applicant realized in 2008 that he needed assistance with his alcohol and drug usage problem. He contacted the Human Resources Director at his then place of employment, who referred Applicant to the Employee Assistance Program. Applicant met with a counselor two or three times in early 2008. On May 3, 2008, he spent the evening drinking with a cousin and they used ecstasy. The next day, May 4, 2008, Applicant presented himself to an inpatient substance abuse treatment center.<sup>10</sup>

Applicant spent three days and two nights at this treatment center. On admission, the center took a medical history and a history of drug and alcohol use. After a full evaluation of Applicant, the center diagnosed alcohol dependence, polysubstance dependence, cocaine, marijuana, and major depression, severe without psychotic features. The evaluating psychiatrist noted that Applicant did have insight into his illness. The treatment center set certain immediate goals for Applicant, as well as long-term goals. It also prescribed the drugs, campral (anti-depressant) and seroquel (sleep

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<sup>7</sup>Applicant described this decision as "a bad decision." Tr. 66-67.

<sup>8</sup>GE 2; Tr. 66-67, 78.

<sup>9</sup>GE 2; AE D; Tr. 74.

<sup>10</sup>GE 2; GE 3; Tr. 32-33, 67-68.

medicine), as part of his treatment. When it discharged Applicant, the treatment center recommended that he continue his treatment on an outpatient basis.<sup>11</sup>

Following his discharge from this center, Applicant contacted a psychiatrist and began treatment for major depression and “opioid”<sup>12</sup> abuse remission. Initially, he met with the psychiatrist every other week. As time passed, the time between visits extended. Presently, Applicant meets with the psychiatrist every three months or sooner, if needed. At the beginning of his treatment, the psychiatrist prescribed an anti-depressant and a sleep medicine. After a short time, the psychiatrist discontinued the sleep medicine. More recently, the psychiatrist discontinued Applicant’s anti-depressant medication and opined that Applicant continues to move in the positive direction of clean and sober. Through his treatment, Applicant agreed that he used alcohol and drugs to self-medicate his depression. Applicant related his depression to his parents’ divorce and his loss of contact with his father after their divorce. Applicant recently re-established a relationship with his father, which he described as good.<sup>13</sup>

Applicant also attended Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) for a period of time after his inpatient admission. He benefitted from both, but he benefitted more from NA. He had a NA or AA sponsor in the past, but does not have a sponsor at this time. Applicant does not attend AA or NA regularly now. If he feels a need to self-medicate, he attends an AA or NA meeting or contacts his psychiatrist. After he drank the one beer on New Year’s Eve in 2008, he met with his psychiatrist, who reminded Applicant “to remember where his alcohol use led him.”<sup>14</sup>

Applicant no longer associates with his drug and alcohol using friends. He does not go to bars or parties now; rather he spends time with his family and doing family events such as going for walks, to the park, or on picnics. He believes his life is better now that he is not drinking alcohol or using drugs, and he does not want to “throw away his life” with alcohol and drugs. He has not used drugs in two years and consumed only one beer in the last two years. Each day he must make a choice to use or not use drugs and alcohol.<sup>15</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

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<sup>11</sup>GE 3.

<sup>12</sup>His psychiatrist is apparently referring to his cocaine use.

<sup>13</sup>GE 2; AE E; Tr. 69-71, 76, 81-82.

<sup>14</sup>GE 2; Tr. 75-76, 77-78, 80, 85.

<sup>15</sup>Tr. 71-72, 76, 80-81.

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. 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, 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. . . ." An 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 an 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 H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

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

Applicant has admitted to regularly smoking marijuana and snorting cocaine, and to a one-time use of ecstasy in the past. To use these drugs, he had to possess them. He acknowledged that he purchased marijuana and cocaine for his use. His psychiatrist has been treating him for opioid abuse in remission, and he was diagnosed with polysubstance abuse in May 2008. The Government has established a *prima facie* case under AG ¶¶ 25(a), 25(c), and 25 (d).

Applicant may mitigate the Government security concerns about drug use under the following conditions set forth in AG ¶ 26:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant last used cocaine in 2005, nearly five years ago and he last smoked marijuana two and one-half years ago. His one time use of ecstasy occurred two years ago. The six negative drug tests in the record support his statements that he no longer uses drugs. He became concerned about his drug use as well as his alcohol use in May 2008. He sought inpatient medical treatment, which he successfully completed. He followed the suggestions to obtain outpatient medical treatment and to participated in NA. He sees his psychiatrist once every three months now and more if needed. Likewise, he attends NA on an as needed basis now. Applicant changed his friends and his activities. He no longer spends time in bars and at parties where alcohol and drugs are used. He prefers to participate in family activities and spend time with his family, especially his young daughter, and new friends. He attends church and works out at the gym. He has not used any drugs in two years. He advised the security investigator that he did not intend to use drugs in the future and signed a statement of intent, agreeing to the loss of his security clearance should he use illegal drugs in the future. Applicant has mitigated the Government's security concerns about his past drug use under AG ¶¶ 26(b)(1)-(4), 26(d), and partially under AG ¶ 26(a).

### **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 in this case:

- (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; and

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

Applicant began consuming alcohol on a regular basis while in high school. During his high school years and during his short time in college, he continued to drink, many times to excess. The police arrested and charged him with DUI once. He became so concerned about his alcohol consumption that he voluntarily sought medical treatment. On admission, the admitting psychiatrist diagnosed him as alcohol dependent. The Government has established a *prima facie* under Guideline G, AG ¶¶ 22(a), 22(c), and 22(d).

An Applicant may mitigate the Government security concerns about alcohol under AG ¶ 23. The following conditions may be applicable in this case:

(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); 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 realized in 2008 that he needed to obtain help because of his alcohol, as well as drug, consumption. He sought medical treatment in May 2008, when he voluntarily entered a treatment program for his alcohol consumption. He followed up his inpatient care with outpatient treatment and AA program attendance. Since successfully completing his treatment program, he has consumed one beer. After he drank the beer, he contacted his psychiatrist because he was concerned about what he had done and its impact on him. He knows he has a problem with alcohol. He attended AA for sometime and goes back when he believes he may want to drink. He abstains from drinking alcohol and continues on a positive course in his life. He has mitigated the

Government's security concerns about his alcohol consumption under AG ¶¶ 23(b) and 23(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 an applicant's and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. As a teenager, Applicant started using alcohol regularly and within two years, he began snorting cocaine at parties with friends. (See AG ¶ 2(a)(3), (4), (5).) Over time, he realized that his alcohol and drug use was not positive behavior in his life. He ceased his drug use first. After a night of drinking and using ecstasy, his concern about his behavior increased. He decided to seek treatment and voluntarily admitted himself to an inpatient treatment program. Since this admission, he has remained drug free and abstained from consuming alcohol. After the one occasion he drank a beer, he immediately met with his psychiatrist to discuss his conduct. When he feels the need to drink or maybe use a drug, he goes to an AA or NA meeting, which helps him from relapsing. He loves his baby daughter and works daily to move forward with his life in a positive manner. He not only understands his past behavior, but recognizes that he

could revert back to that behavior. He knows he must make a decision each day to remain drug and alcohol free. He has developed a new life, which involves his family, not drugs and alcohol or the friends he had when he used drugs and alcohol. He changed his life and likes the new direction he is taking in his life. Given his attitude and significant behavior changes, there is little likelihood of a recurrence of his past drug and alcohol use. The potential for pressure, coercion, exploitation, or duress as a result of his past conduct is not likely, as he has been open and honest about his conduct. His past drug and alcohol use does not raise concerns about his fitness to hold a security clearance. The positive evidence of record and his significant change in behavior outweighs Applicant's negative conduct in the past.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his past drug and alcohol use under Guidelines H and G.

### **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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

## **Conclusion**

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

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MARY E. HENRY  
Administrative Judge