



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



In the matter of: )  
)  
) ISCR Case No. 09-06385  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Stephanie N. Mendez, Esq.

December 8, 2010

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On April 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. 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 May 18, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 29, 2010. DOHA issued a notice of hearing on July 27, 2010, and the hearing was convened as scheduled on August 17, 2010. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified, offered one witness, and presented exhibits (AE) A-Q. Applicant's exhibit index is marked as Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on August 25, 2010.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He is single and has no children. Since May 2009, he has worked as systems analyst for a defense contractor. He has a master's degree.<sup>1</sup>

Applicant's conduct raised in the SOR includes: (1) consuming alcohol, to the point of intoxication, from about 1984 (when he was 19 years old) to 2007 (admitted); (2) being arrested, charged and pleading guilty to driving under the influence (DUI) in November 2002 (admitted); (3) being arrested, charged and pleading guilty to driving under the influence in November 2007 (admitted); and, (4) the two driving while intoxicated incidents were cross alleged by the Government as criminal conduct (admitted).

Applicant started drinking alcohol when he was 19 years old. He drank socially with friends on weekends. Typically, he consumed two or three 12-ounce beers on these occasions. He had moved out of his parent's house and was living in the city where he attended college when he started drinking. More recently, Applicant consumed alcohol approximately three times a week. This occurred mostly on the weekends at a sports bar where he would socialize and watch ballgames. He consumed several 12 ounce beers during these occasions. He drove after drinking.<sup>2</sup>

In November 2002, Applicant was drinking at a local bar. He drank several 12-ounce beers and then, after a friend arrived, he started drinking martinis. He left the bar alone in the early evening. He proceeded to drive home. On the way home, his car hit some road debris causing a flat tire. A motorist stopped to assist Applicant, noticed the Applicant appeared to be intoxicated, and called the police. The police arrived and gave Applicant a breath test, which reflected a .23 blood-alcohol level. Applicant was arrested for driving under the influence, among other charges. Applicant pled guilty to the driving under the influence charge and all other charges were dropped. He was sentenced to community service, a fine, six-month attendance at alcohol awareness classes, loss of

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<sup>1</sup> Tr. at 28-30; GE 1.

<sup>2</sup> GE 3; Tr. at 30.

license for 30 days, and five years probation. Applicant completed all the conditions of his sentence. Applicant admitted that he drank alcohol and then drove his car while he was on probation for this DUI offense.<sup>3</sup>

In November 2007, shortly after his probation ended, Applicant was at a local sports bar on a Sunday watching ballgames. He drank about nine mixed drinks over a four hour time frame. Later, he left the bar alone to go home. While driving his car out of the parking lot, he turned out onto the street. He pulled out in front of a police car that immediately stopped him. He admitted to the officer that he had been drinking. Applicant was then taken to the police station where his blood was drawn. His blood-alcohol level registered at .18. He was arrested for driving under the influence. He once again pled guilty to the DUI charge and was sentenced to community service, a fine, 12 months suspended driver's license, 18 months attendance at an alcohol awareness program, and five years probation. He has completed all these terms except for the probation which will end in November 2012.<sup>4</sup>

Applicant stopped drinking shortly after his November 2007 DUI arrest. He has been sober, without a drink, for 28 months. He completed the court-mandated alcohol awareness program and is a regular attendee at Alcohol Anonymous (AA) meetings. He feels very strongly about the AA philosophy and is using it in his life to maintain sobriety. He has an AA sponsor and is working the AA 12-step program. He has no desire to drink again and plans on continuing his AA participation. He signed a letter of intent vowing never to use alcohol again. His AA sponsor testified that Applicant has attended AA twice a week for the last two-and-a-half years. He believes Applicant is honest and exercises good judgment. There is no evidence of a formal medical diagnosis for Applicant as either alcohol dependent or as an alcohol abuser.<sup>5</sup>

Applicant is supported by numerous character letters attesting to his honesty, trustworthiness, and integrity. The president of his current company wholeheartedly supports Applicant's clearance request having full knowledge of Applicant's alcohol history. Applicant is viewed as a valued employee.<sup>6</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.

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<sup>3</sup> Tr. at 30-35, 57; GE 3.

<sup>4</sup> Tr. at 35-38, 67; GE 3.

<sup>5</sup> Tr. at 22-27, 37-41; AE I, J, Q.

<sup>6</sup> AE A-D, K, L, P.

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 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. Two are applicable 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; 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's two DUI arrests and his pattern of drinking through November of 2007 support the application of both AG ¶¶ 22(a) and (b).

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; and
- (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).

Applicant has abstained from alcohol use for 28 months. He is committed to a life of sobriety and AA participation. He was supported by his AA sponsor who explained Applicant's participation in AA. He is viewed as reliable, trustworthy, and as having good judgment by his company's president. I find that sufficient time has passed since his last alcohol-related incident and none of the incidents cast doubt on his current reliability, trustworthiness, or good judgment in view of his changed lifestyle and commitment to sobriety. Moreover, Applicant acknowledged that he was an alcohol abuser and, therefore, committed himself to abstinence and full AA participation. I find both AG ¶¶ 23(a) and (b).

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (d) individual is currently on parole or probation.

Applicant pled guilty to two DUI offenses and he remains on probation for the most recent DUI conviction. I find that both the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for Criminal Conduct under AG ¶ 32 and especially considered the following:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant's commitment to a sober lifestyle and his 28 months of abstinence demonstrate successful rehabilitation and a sufficient passage of time. Both mitigating conditions apply.

### **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 considered Applicant's age, education, his probationary status, his period of alcohol abstinence, his commitment to AA, and his character references. Applicant discovered that his alcohol related lifestyle led to bad decisions that culminated in criminal action. After his second DUI, Applicant became serious about his sobriety and became committed to AA. He has complied with all the terms of his probation. I am convinced that Applicant understands the importance of his sobriety and is committed to it.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct.

### **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.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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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Robert E. Coacher  
Administrative Judge