



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



In the matter of: )  
)  
) ISCR Case No. 09-06633  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

December 22, 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 December 16, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance for his position with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigations and Applicant's response to the Interrogatories, DOHA could not make the preliminary affirmative finding required to issue a security clearance, On May 17, 2010, DOHA issued a Statement of Reasons (SOR) to Applicant detailing security concerns for alcohol consumption under Guideline G. These actions were 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 answered the SOR on June 21, 2010. He denied one allegation (SOR 1.a) and admitted two allegations (SOR 1.b, and 1.c) of alcohol consumption under Guideline G. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 2, 2010. An initial hearing was scheduled for September 15, 2010, by another administrative judge. Since Applicant was stationed overseas, he timely requested a delay until he returned. The case was assigned to me on September 23, 2010. DOHA issued a Notice of Hearing on October 15, 2010, for a hearing on November 1, 2010. I convened the hearing as scheduled. The Government offered two exhibits, marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 and 2. Applicant testified on his behalf. Applicant offered two exhibits marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A and B. The record was held open for Applicant to submit additional documents. Applicant timely submitted four additional documents marked and admitted without objection as App. Ex. C through F. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 3, Memorandum, dated November 16, 2010) DOHA received the transcript of the hearing (Tr.) on November 9, 2010.

### **Findings of Fact**

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

Applicant is 44 years old and has worked as a security specialist in Iraq for his defense contractor employer for over four years. His position requires him to provide security for bases and convoys under combat conditions. He has been under fire by insurgents and subject the risk of being injured by explosive devices. He was married in 1993 and divorced in 2000. He is college graduate, and this is his first request for a security clearance. (Tr. 35-36; Gov. Ex. 1, e-QIP, dated December 16, 2008)

Applicant admits that he was arrested for driving while intoxicated in May 2007 while he was home on leave from his job in Iraq. He drank some beer at a barbeque at a friend's house. He was stopped for speeding after leaving the barbeque and administered a blood alcohol test which registered .14. The judge has not yet scheduled a hearing in the case since Applicant is overseas most of the time. Applicant's attorney contacted the judge and a decision was made to wait for Applicant's return from overseas so he could complete the terms of any negotiated pleas during a 12-month period. It is anticipated the case will be completed by March 31, 2011. (Tr. 21-23; App. Ex. E, Attorney's letter, dated November 11, 2010)

Applicant admits he was also arrested for driving while intoxicated on March 7, 2008. He was again home on leave from his job in Iraq and was drinking with friends at a restaurant. He was stopped after a minor accident and failed a field sobriety test. On

August 7, 2009, the charge was reduced to reckless driving and Applicant sentenced to one year probation, ordered to complete 40 hours of community service, attend a risk reduction DUI school, and receive a substance abuse evaluation and undergo random drug screening. Applicant completed his community service requirement. (Tr. 15-16; App. Ex. C, e-mail, dated November 9, 2010) Applicant attended and completed the DUI risk reduction program on October 18, 2010. While in the program, he received random drug and alcohol testing. All tests were negative. (Tr. 14-15, 18-19, 27-31; App. Ex. A, Certificate, dated October 18, 2010) Applicant had a substance abuse evaluation which determined that Applicant does not meet the diagnostic criteria for alcohol dependence, but he has had episodes of alcohol abuse. (Tr. 15-18; App. Ex. B, Receipt, dated November 24, 2009; App. Ex. F, Letter, dated November 24, 2009) Applicant's probation has been successfully terminated. (App. Ex. D, e-mail, dated November 9, 2010)

Applicant denies a problem with alcohol. He admits he started drinking at age 18 when it was legal for him to drink alcohol. He does not drink while at his job in Iraq. On leave at home prior to his attending DUI risk reduction classes, he admitted that he drank alcohol one to three times a week at parties or restaurants and may have drunk alcohol to the point intoxication two or three times a month. (Gov. Ex. 2, Response to Interrogatories, dated September 21, 2009) He admitted that drinking and driving were bad decisions that he made in the past. For over two years since the March 2008 incident, he does not drink and drive. If he is driving, he does not drink. If there is a designated driver, he may consume approximately one alcoholic drink an hour. Since attending the alcohol risk reduction program in November 2009, he has learned a lot about drinking and driving. Based on this information, he modified his behavior. He last drank alcohol and drove in May 2010 when he had two beers before driving home. (Tr. 12-14, 19-20) On his present leave, he has not drunk alcohol and then driven. He admits that on his present leave in October 2010, he drank some alcohol but not to the point of intoxication. He learned from the DUI risk reduction program that he could be driving impaired even after drinking only a small amount of alcohol. (Tr. 23-25, 30-32)

### **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 protect 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 two allegations of driving while intoxicated which raise alcohol consumption security concerns. There is information that he started drinking at age 18 when it was legal for him to drink in that jurisdiction. Except for the two admitted incidents of DUI, there is no information to substantiate the allegation that he consumed alcohol to the point of intoxication from 1984 until 2009. 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 two arrests for driving while intoxicated from alcohol consumption raise 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). Even though each incident was separate and there was a long period of time between the

incidents, 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 abuser or alcohol dependent) is raised. Applicant was never diagnosed as an alcohol abuser or alcohol dependent, but only that he had episodes of alcohol abuse, so 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), AD DC AG ¶ 22(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), and AC DC AG ¶ 22(f) (relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program) are not raised. The available information shows Applicant complied with court directives after his 2008 conviction for driving while intoxicated. AC DC AG ¶ 22(g) (failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence) is not raised.

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 misconduct, 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 was arrested twice, in 2007 and 2008, for driving under the influence of alcohol while on home leave from his civilian job in Iraq. He has not had an alcohol-related or other law enforcement incident since his last alcohol-related incident in March 2008. He successfully completed his sentence for the March 2008 incident. This sentence included attendance at a DUI risk reduction program. Applicant learned about the problems of alcohol consumption and driving from this program. He established that his life circumstances have changed. He knows the risk of even the slight consumption of alcohol and how it affects his ability to drive. He now does not drink and drive. A significant period of time, over two years, has elapsed since the last incident of alcohol-related misconduct. The evidence shows a change of circumstances to indicate Applicant has been reformed or rehabilitated, and it is unlikely his previous alcohol consumption problems will recur. His present circumstances and life style show that his past conduct does not now 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 applies. Applicant acknowledges that in the past he had a problem with alcohol. However, he now drinks sparingly and does not drive if he drinks. He has not been evaluated as an alcohol abuser or alcohol dependent. He completed all sentencing requirements to include an

alcohol risk education program, and community service. Even though the first incident in 2007 has yet to be adjudicated, it appears that he can complete any sentence imposed. Applicant 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. Appellant has mitigated security concerns for alcohol consumption.

### **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 is serving in combat conditions as a security specialist in Iraq. Applicant's alcohol-related problems happen when he is home on leave from stressful living conditions. He has established he is now wiser and more focused about alcohol consumption. There is every indication that his present alcohol consumption is minor and under control. His use of alcohol is responsible, and not excessive. His last alcohol-related incident was over two years ago and his alcohol-related actions are in the past and do not indicate poor self control, lack of judgment, and unwillingness to abide by rules and regulations. The record evidence leaves me with no questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the alcohol consumption security concerns.

### **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

**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