



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-06801

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

April 21, 2011

**Decision**

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WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his alcohol consumption. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 28, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs), implemented by the Department of Defense (DOD) on September 1, 2006.

Applicant responded to the SOR on August 28, 2010, and requested a hearing. The case was assigned to me on November 4, 2010, and was scheduled for hearing on December 16, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of nine exhibits; Applicant relied on three witnesses (including himself) and five exhibits. The transcript (Tr.) was received on December 29, 2010.

### **Summary of Pleadings**

Under Guideline G, Applicant allegedly (a) consumed alcohol habitually to the point of impaired judgment, and obtained counseling and treatment from Dr. A at the Department of Veterans Affairs (VA) in 2007, who diagnosed him with alcohol abuse and dependence; (b) was arrested and charged with alcohol-related disorderly conduct in April 2007; (c) received alcohol rehabilitation evaluation and treatment from a Navy facility between February and March 2006, where he was diagnosed with alcohol dependence; (d) was charged in November 2005 with Article 128-alcohol-related assault by battery; Article 109-destroyed or damaged nonmilitary property (more than \$100); and Article 134-Drunk/Disorderly; (e) charged with drunk and disorderly; and (f) continued to consume alcohol after being diagnosed alcohol dependent.

In his response to the SOR, Applicant admitted some of the allegations, but denied others. He denied seeing Dr. A for alcohol treatment, and he denied being charged with drunk and disorderly. Applicant claimed that he reduced his alcohol consumption following his 2007 incident and has avoided any alcohol-related incident since then. He claimed he excels in his job and has excellent character references. And he claimed he has learned from his past experiences with alcohol and has made positive changes in his personal and professional life.

### **Findings of Fact**

Applicant is 28-year-old test site manager for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant graduated from high school in June 2002 and enlisted in the U.S. Marine Corps in October of the same year. (GE 10). He served two tours in Iraq as a combat engineer. (GE 4; Tr. 76-80) He received his honorable military discharge in November 2006 and remains an active member of the U.S. Marine Corps reserves. (GEs 1 and 9; Tr. 107) His military awards and citations include an Iraqi campaign medal, a global war on terrorism service medal, a global war on terrorism expeditionary medal, a Navy commendation medal, and a certificate of commendation. (GE 4) Since his discharge, he has worked in a civilian role for a contractor who tests weapon systems. (GE 4)

Applicant married in December 2004 and has no children. (GEs 1 and 4) While they were married and living together, he and his wife rented a home. She is a paraprofessional for a local private school. (GEs 1 and 4) Applicant and his wife separated in October 2008 following a heated domestic argument in February 2008, in which police were called to their home. (Tr. 100-101) According to police accounts, Applicant and his wife were drinking during the night. (GE 9) Their divorce is still pending. (Tr. 100)

Applicant was introduced to alcoholic beverages in social situations when he was about 14 or 15 years of age. (GE 7) He seldom consumed more than four to five beers at a time when he congregated with his high school friends on the weekends. (GE 3; Tr. 70) He increased his drinking to mostly daily consumption at the age of 19 and continued drinking at this level until he enlisted in the U.S. Marine Corps. (GE 3; Tr. 70-71) On some weekends, he consumed as much as 12 to 18 drinks in a setting (either beer or mixed drinks) and became intoxicated. (GE 3; Tr. 75-76)

Once Applicant enlisted, however, he cut back a little in his alcohol consumption at the outset of his enlistment. (GE 3) For the most part, though, he consumed alcohol much as he did in high school when not deployed. (Tr. 72-73) On deployments, typically he had access to alcohol on a nightly basis and consumed alcohol on a light to moderate basis. (Tr. 76-80)

After Applicant returned to the U.S. from combat duty in Iraq in August 2005, he encountered significant emotional problems. (GE 7) His symptoms included nightmares and sleep-depriving anxiety over his fear of having nightmares. He soon discovered that if he consumed significant amounts of alcohol he would fall asleep and his nightmares would become less frequent. (GE 7) By November 2005, he found his condition to be severe enough to prompt his seeking professional assistance and soon began consulting a civilian psychologist (Dr. B).

### **Applicant's alcohol-related incidents and treatment**

Applicant was arrested in November 2005 following a night of drinking and gambling at a local casino. (Tr. 82-83) Once he and his wife arrived at their house they began arguing with each other. At this point, he blacked out and pushed his wife against the closet. See GEs 3 and 7; Tr. 83-84.

As a result of his November 2005 incident, Applicant was charged with assault by battery (Article 128), destruction or damage to non-military property, more than \$100 (Article 109); and drunk/disorderly conduct (Article 134). (GE 9) He received nonjudicial punishment under Article 15 that included reduction in rank to lance corporal (E-3) and restriction and extra duty for 45 days (to run concurrently). (GEs 2 and 9)

Following his drunk and disorderly incident, Applicant sought help for his anxiety and nightmares from a local Veterans Affairs (VA) clinic. When he first visited the VA clinic in November 2005, he was initially referred to Dr. B for evaluation. Both Dr. B and

Dr. C evaluated Applicant, and diagnosed him with posttraumatic stress syndrome (PTSD). (GE 7) Dr. B told him that he had been drinking as a way of self-medicating himself. Dr. B then assisted in enrolling him in a local Navy outpatient treatment program for patients with alcohol issues. Because of the distance involved, he became an inpatient of the SARD facility and participated in the facility's 30-day alcohol program between February 2006 and March 2006. GE 7) During his inpatient stay, he was medicated with Zoloft to treat his anxiety symptoms. (GE 7)

While in the SARD program he was diagnosed with provisional alcohol abuse and subsequently alcohol dependence by Dr. F (a licensed clinical psychologist). See GEs 3 and 7) Applicant disputes Dr. F's diagnosis (Tr. 67-68), but provides no probative evidence to counter the diagnosis. Medical records reveal that Applicant completed a four-week residential treatment course with the SARD program. His program consisted of group therapy, individual counseling, skill-building workshops, educational classes, and attendance at Alcoholics Anonymous (AA) meetings. While in this treatment program, he demonstrated moderate progress. He completed the program in March 2006 and was discharged from the SARD facility with a fair prognosis. See GEs 3, 4 ad 7 and AE A; Tr. 89-91.

Once Applicant was released from the SARD program, he briefly abstained from drinking. (Tr. 90) Finding that his prescribed medications did not work for him, he resumed drinking in late 2006, at the rate of one to three beers at a time, several times a week. (GE 7; Tr. 92) He gradually increased his consumption of beer to the point where he would fall asleep.

In December 2006, Applicant referred himself to Dr. B for further evaluation of his mental and emotional state associated with his flash-backs of his Iraq experiences. (GE 4) in his initial session with Dr. B, Applicant reported intrusive memories of Iraq and feelings of anxiety and worry much of the time. In his evaluation of Applicant, Dr. B found no indication of any thought disorder. He credited Applicant with good ability to reconstruct recent and past events in Iraq and exhibited positive orientation and understanding of the purpose of his evaluation. Using the multi-axial table covered in the *Diagnostic and Statistical Manual* (4<sup>th</sup> ed. 2004) DSM-IV), Dr. B assigned an Axis I diagnosis of PTSD, chronic, and no Axis II diagnosis. (GE 4) For treatment, Dr. B prescribed both individual and group psychotherapy to address his dream issues associated with his two Iraq tours and to provide cognitive behavioral instructions and coping techniques to re-label triggers as cues for coping. (GE 4)

Between February and June 2007, Applicant participated in several therapy sessions with Ms. D (a licensed social worker) and Dr. B. See GE 4 and AE A. Dr. B recommended continued therapy sessions for Applicant. But Applicant did not follow through with Dr. B's therapy sessions after June 2007. (Tr. 91-93)

In April 2007, Applicant consumed about 3/4 of a fifth of whiskey while at home by himself. (GE 7) He became intoxicated and destroyed property, causing damage to his rented apartment. (GEs 5 and 7; Tr. 93-94) Police officers called to the home arrested

Applicant and charged him with disorderly conduct. (Tr. 93-94) When he arrived at the local jail, he was booked and held overnight. The following morning he was released on his own recognizance. (GE 7) When he appeared in court to face his disorderly conduct charges, the court deferred adjudication for a year and required Applicant to abstain from any criminal infractions during this period. (GEs 5 and 6) The case was dismissed in April 2008.

Applicant referred himself to Dr. A in June 2007 for consultation over his continuing problems with his combat-related PTSD. (AE C; Tr. 64-65, 95-96) He has continued to be counseled and treated by Dr. A for PTSD, and not alcohol abuse. Asked about any previous alcohol dependence diagnosis he made concerning Applicant, Dr. A confirmed in an August 2010 letter that Applicant has been treated for PTSD, and not alcohol abuse or dependence. (AE C; Tr. 97-98). Dr. A's assessment is consistent with an earlier 2009 assessment in which he credited Applicant with being in "[s]ustained remission from alcohol abuse now since 29 June 2007." See GE 9. When Dr. A last counseled Applicant, he assured him that he was not alcohol dependent in any way and "was previously mis-diagnosed." (Tr. 112) Dr. A prescribed no outpatient therapy for Applicant (Tr. 113), and Applicant has never attended an AA meeting since completing his SARD program in December 2005. (Tr. 113-114)

A more recent medical evaluation report prepared by a licensed social worker (Ms. E) in November 2010 revealed no Applicant problems with alcohol. (AE E) Ms. E described Applicant's current drinking pattern as occasional. She credited him with discontinued drinking in early 2007, once "he started taking his medication." (AE E) Applicant assured Ms. E that he has not used alcohol much since he stopped self-medicating with alcohol in 2006, and "only drinks socially once in a while." (AE E). Ms. E credited Applicant with doing well with his PTSD medications and limiting his alcohol use. (Tr. 98-101) She characterized Applicant's past PTSD symptoms to be severe enough to cause him to self-medicate with alcohol and impair functioning without creating sufficient indicators to meet the criteria for an alcohol abuse or dependence disorder under the *DSM IV*. (AE E)

In making her evaluation of Applicant, Ms. E cited his good judgment and impulse control, his healthy self-esteem, his strong support system with his girlfriend, his logical, relevant, and coherent thought process, and his strengthened coping skills as probative of his commitment to alcohol avoidance for the most part. (AE E) She assigned an Axis I diagnosis of PTSD to Applicant and an alcohol abuse, in partial remission diagnosis on the Axis II scale. See *DSM-IV, supra*. The assessments of Applicant's most recent mental health professionals are well supported, credible, and are fully accepted.

Since June 2007, Applicant has consumed alcohol sparingly. His occasional drinking has not resulted in any incident that can be characterized as an alcohol-related incident. Police accounts of drinking by Applicant and his wife before their February 2008 domestic quarrel (GE 9) do not provide sufficient suggestions of any Applicant abuse of alcohol to warrant classifying the spousal quarrel as an alcohol-related incident. See AE E. The accounts in the police report alone do not justify any drawn inferences of the

quarrel being precipitated in any way by excessive alcohol consumption on the part of Applicant.

### **Endorsements**

Applicant's direct supervisor and work colleagues describe Applicant as a self-starter who has consistently accepted increased responsibilities to ensure that all tests at the site are adequately covered. (AE B) They characterize Applicant as ethical, honest, and responsible for his actions and deeds. Site managers who have supervised Applicant credit him with being an outstanding employee who presents himself on and off duty in an honorable and trustworthy way. (AE B) They credit Applicant with superb performance and exercise of responsibility each day in elevated temperatures and praise him for making personal sacrifices to ensure the success of their mission. (AE B)

The test director at Applicant's work site described Applicant as an outstanding team player who works well without supervision and is a key contributor to his mission's success. (AE B) And a field test engineer of Applicant's facility described him as a dedicated professional who is capable of handling any situation with thoughtfulness and maturity. (AE B)

Coworkers who have worked and socialized with Applicant attest to his honesty and his avoiding alcohol in their presence. (Tr. 43-44, 48-49) They find him trustworthy and an excellent performer. (AE B; Tr.43-45) His girlfriend of eight months (also a coworker) has never seen him drink to excess and finds him very trustworthy. (Tr. 54-58) She described his drinking pattern as "maybe once a month." (Tr. 58)

### **Policies**

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and all of the "[c]onditions that could mitigate security concerns," if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period

of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors:

(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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Alcohol Consumption**

*The Concern:* 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 ¶ 21.

### **Burden of Proof**

By virtue of the principles and policies framed by the revised AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a highly regarded test site manager for a defense contractor with some history of alcohol abuse in high school and self-medicating with alcohol to cope with stress and anxiety following his returns from two Marine combat tours in Iraq. Applicant’s exhibited alcohol abuse and early diagnosis of dependence at a SARDs treatment facility in February 2006 raise security concerns covered by Guideline G of the AGs.

Applicant’s recurrent problems with abusive drinking raise major concerns over his risk of recurrent alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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,” DC ¶ 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,” and DC ¶ 22(f), “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.”

Because of the conflicting alcohol dependence diagnoses in the record, only limited application of DC ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” may be employed in Applicant’s circumstances. While Dr. F’s 2005 diagnosis was well developed and supported at the time, it was not adopted by Dr. A in his more recent 2007 and 2010 evaluations. In both instances, Dr. A confirmed an Axis I PTSD diagnosis and no Axis II diagnosis. Ms. E (a licensed social worker) who evaluated Applicant this past year corroborated Dr. A’s findings. She made an Axis I diagnosis of PTSD and an Axis II diagnosis of alcohol abuse in full remission. Hence, only partial DC ¶ 22(d) application is warranted in these circumstances.

While Applicant has not remained entirely abstinent since commencing treatment with Dr. A in June 2007, he seldom drinks and has encountered no verifiable alcohol-related incidents since April 2007. Although police accounts report drinking by Applicant and his wife before their February 2008 domestic quarrel, there are no firm proofs that either Applicant or his wife had abused alcohol preceding their argument. Without more



developed facts to link their arguments with their consumption of alcohol, this incident cannot qualify as an alcohol-related incident.

Documented support of an applicant's sustained sobriety following an alcohol dependence diagnosis is, of course, an important consideration in determining what weight to assign to the applicant's rehabilitation claims. See ISCR Case 02-03186 (App. Bd. Feb. 16, 2006); ISCR Case 01-20579, at 5 (App. Bd. Apr. 14, 2004). While the maintenance of total sobriety is preferable where there is proof of an applicant's relapse, it is not an essential requirement to facilitate safe predictions about an applicant's ability to avoid any recurrent relapse in the foreseeable future.

Considering the elapse of time, recent diagnoses of Dr. A and Ms. E, and the favorable prognoses of these mental health professionals who have worked with Applicant over the past four years, Applicant may take considerable advantage of MC ¶ 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." Partially applicable to Applicant's circumstances are MC ¶ 23(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."

Faced with similar evidence of a sustained recovery and favorable prognoses by mental health professionals, the Appeal Board has indicated that safe, predictive judgments about an applicant's ability to avoid abusive incidents in the future may be made without jeopardizing the national interest. See ISCR Case No. 06-17541 (App. Bd. Jan. 14, 2008); ISCR Case No. 04-10799 (App. Bd. Nov. 9, 2007); ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007).

Taking into account both Applicant's history of alcohol abuse and dependence and corresponding evidence of rehabilitation, his strong work record, the applicable guidelines and a whole-person assessment of his alcohol moderation efforts, conclusions warrant that his overall efforts reflect sufficient evidence of sustained commitment to a program that provides optimum protections against recurrent alcohol abuse.

Applicant's mitigating evidence is reinforced by a whole-person assessment of his contributions to U.S. missions in defending U.S. interests and securing the peace in Iraq. His two tours of meritorious combat service in this country distinguished him as a Marine, but also proved to be personally costly to his health. His combat tours left him with serious symptoms of PTSD that prompted him to turn to alcohol to help him sleep.

Applicant makes a sufficiently convincing showing that his excessive drinking in the past was situational and that he can be trusted to drink responsibly under the approving guidance of mental health professionals to avert any recurrent problems with judgment lapses related to alcohol. His contributions to the U.S. Marine Corps, as a combat veteran, and the superb efforts he has displayed with his current employer are notable and worthy of praise. Together, they are enough to overcome risks of potential relapse. In balance, his mitigation efforts to date are weighty and enough at this time to warrant safe predictions that he is no longer at risk to judgment impairment associated with alcohol abuse. Favorable conclusions warrant with respect to the allegations covered by the alcohol guideline of the SOR.

### **Formal Findings**

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE G (ALCOHOL CONSUMPTION):      FOR APPLICANT

Subparagraphs 1.a through 1.f:      For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge

