



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-07395
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 25, 2010  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline H, Drug Involvement, but failed to mitigate the Government’s security concerns under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. Applicant’s eligibility for a security clearance is denied.

On March 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, H, and J. 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 18, 2010, and requested a hearing before an administrative judge. The case was assigned to me on April 5, 2010.

DOHA issued a Notice of Hearing on April 9, 2010. I convened the hearing as scheduled on May 25, 2010. The Government offered Exhibits (GE) 1 through 5. Applicant did not object and they were admitted. Applicant and one witness testified on his behalf. He offered Exhibits (AE) A through C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 2, 2010.

### **Procedural Matters**

Department Counsel withdrew ¶ 1.d of the SOR.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, 2.a, 2.b, 2.d, and 3.a. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He attended vocational school as part of high school. He was married from 1997 to June 2003. He has no children. He worked in a casino from 1996 to 2007, until he was laid off. He has been employed by a federal contractor since May 2009.<sup>1</sup>

Applicant first used marijuana when he was in high school. He used it from approximately 1980 sometime in 2007. He believes he likely used it at his home. Using illegal drugs while working in a casino was not permitted. He stated that he disclosed his use to his former employer when he applied for the required license to work in a casino. He received his license in 1998. He was required to take a drug test during the initial employment process and did not have to take another one once he was employed. He stated he used marijuana about once a month on average and he did not purchase the drug. He did not use any other illegal drugs.<sup>2</sup>

In February 2004, Applicant was arrested and charged with possession of marijuana. He pled guilty to the offense. He stated the drugs were in his car. His driver's license was suspended for six months and he was fined \$1,200.<sup>3</sup>

In September 2000, Applicant was charged with possession of paraphernalia. He does not recall the offense.<sup>4</sup>

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<sup>1</sup> Tr. 24-27.

<sup>2</sup> Tr. 26, 28-35, 49-50.

<sup>3</sup> Tr. 35-37, 46.

<sup>4</sup> Tr. 37; GE 3.

In March 1982, Applicant was charged with possession of marijuana. He admitted he had been using marijuana that day. He stated the charge was later dropped.<sup>5</sup>

In March 1999, Applicant was charged with unlawful possession of a weapon and receiving stolen property, both felonies. He was driving and picked up two people, his friend, and a friend of his friend. He was stopped by the police and the other friend placed a hand gun underneath the seat of the car. The gun was stolen. Applicant stated he pleaded no contest to the charge and was awarded one year of probation. However, the records show he was found guilty of possession of a hand gun, a felony. He was sentenced to four years in jail, all of which was suspended. Applicant stated he thought he pleaded guilty to a lesser offense.<sup>6</sup>

In December 2006, Applicant was arrested for Driving Under the Influence of Alcohol (DUI). It was Christmas day and he was at a friend's house where he had been drinking alcohol. He was fined and lost his license for three months. He attended group alcohol counseling three to four times a week. It was not court ordered. He did not go to court for this offense until June 11, 2008. He was found guilty of Operating under the Influence of Liquor or Drugs. His license was suspended for two years. He is required to attend a state mandated alcohol program, but because there are no vacancies, he has to wait to attend.<sup>7</sup>

Applicant continued to drink alcohol after his December 2006 DUI arrest. On October 1, 2008, Applicant was arrested and charged with Driving Under the Influence of Alcohol. He paid a fine and his license is suspended for three years. He attended a residential alcohol rehabilitation program after this incident. The state paid for the detoxification program. He received a scholarship for part of the rehabilitation program, and he paid the remaining amount. He stayed in a halfway house for about five months. He submitted to alcohol tests two to three times a week. He stated that he was diagnosed as an alcoholic. He admitted he was told by the staff personnel he should abstain from drinking alcohol. He was advised during the alcohol rehabilitation program that he should never drink alcohol again. He explained that one of the requirements to remain in the rehabilitation program was he was not permitted to drink any alcohol.<sup>8</sup>

Applicant stated both his grandfather and father were alcoholics and he believes he is one too. He saw a few doctors about his alcohol problems. At one point he took antabuse. Applicant continues to consume alcohol. His last drink was four or five days prior to the hearing. He stated he has two glasses of wine with dinner, a red and a white glass. He estimated he drinks twice a week, usually on the weekend. He attends

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<sup>5</sup> Tr. 37-38.

<sup>6</sup> Tr. 38-45; GE 3, 4.

<sup>7</sup> Tr. 50-58, 63.

<sup>8</sup> Tr. 58-71; GE 2.

Alcoholics Anonymous (AA) or Narcotics Anonymous meetings. He does not have a sponsor. The reason he stated was: "Because I believe he wouldn't agree with me drinking on occasion."<sup>9</sup>

Applicant stated he believed he likely drank alcohol and drove a car other times, but did not get caught. He has not driven since his driver's license was suspended. He drinks at home. He walks to the store to buy his alcohol. He estimated in 2006, he was drinking a bottle of wine a day. He stated he has taken every step possible to quit drinking. He does not abstain and he would like to stop, but admitted it is tough. Applicant has struggled with alcohol his whole life and it will always be there and he admitted he has to learn to do without it. He knows he has a problem and he is ready to address it and has been addressing it. He does not believe his alcohol problems have affected his work. His intent is to quit drinking and he is trying to stop.<sup>10</sup>

In response to interrogatories dated December 11, 2009, Applicant indicated he did not currently drink alcoholic beverages. He indicated he did not intend to drink alcoholic beverages in the future. He indicated that he was participating in Alcoholics Anonymous to abstain from drinking alcohol and he was attending meetings on a weekly basis and participating in the 12-step program.<sup>11</sup>

A character witness testified on Applicant's behalf. He has known him for 35 years and has had both personal and professional contact. He was aware that Applicant got in trouble from time to time, but he believes he has taken steps to get on "the straight and narrow." He has also taken steps to become responsible and be an upstanding member of the community.<sup>12</sup>

I have considered all of the character statements provided by Applicant. The letters describe Applicant as honorable, honest, and dependable. He is always willing to help people. He is considered a good man who made mistakes. He is a conscientious and responsible employee, who is motivated and a natural leader.<sup>13</sup>

## **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 are considered in evaluating an applicant's eligibility for access to classified information.

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<sup>9</sup> Tr. 23, 54-57, 68-70.

<sup>10</sup> Tr. 22, 71-73.

<sup>11</sup> GE 2.

<sup>12</sup> Tr. 83-87.

<sup>13</sup> AE A.

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 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 the applicant may deliberately or inadvertently fail to protect 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.

I have considered all of the disqualifying conditions under AG ¶ 22 and conclude the following are potentially applicable:

(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;

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

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant was arrested twice for DUI. His first arrest was in December 2006. He was convicted of Operating Under the Influence of Liquor or Drugs on June 11, 2008. Four months later he was arrested again for DUI and was found guilty of the offense. Applicant entered a rehabilitation program, but insufficient evidence was provided regarding the qualifications of the personnel at the program to apply AG ¶ 22 (d) or (f). Therefore, I find AG ¶ 22(a) applies.

I have considered all of the mitigating conditions under AG ¶ 23 and conclude the following are potentially applicable:

(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;

(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 a treatment recommendation, such as participation in meeting of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical profession or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant referred himself for alcohol treatment after his second alcohol-related driving incident in October 2008. He admitted he was diagnosed as an alcoholic and

was told to abstain from drinking alcohol in the future. He completed the program in March 2009. When he answered his interrogatories in December 2009, he stated he had abstained from drinking alcohol and did not intend to drink in the future. He also indicated he was attending AA and completing the 12-step program. Since then he has resumed drinking alcohol. He does not have a sponsor at AA because he knows the sponsor will tell him to abstain from drinking. He continues to struggle with alcohol. He last drank alcohol four or five days prior to his hearing. He completed the treatment program. He acknowledges he is an alcoholic. I cannot find AG ¶ 23(a) applies because Applicant continues to drink alcohol and I am not convinced that his alcohol-related problems are unlikely to recur. Although Applicant acknowledges his alcoholism he has not provided sufficient evidence to conclude he has overcome this problem and established a pattern of abstinence. Therefore, AG ¶ 23(b) does not apply. Applicant successfully completed an alcohol rehabilitation program, but has not abstained from consuming alcohol as was recommended by the program. Although he participates in AA, he continues to drink. It appears in December 2009, he was attempting to abstain from consuming alcohol and was a full participant in the 12-step program. He has regressed and is consuming alcohol and does not have an AA sponsor for that reason. It appears Applicant is sliding back into his pattern of alcohol consumption. I find AG ¶ 23(d) does not apply.

#### **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. 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under drug involvement AG ¶ 25 and conclude the following have been raised:

- (a) any drug abuse; and
  
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana with varying frequency from 1980 to 2007. He possessed marijuana during that time and was charged with possession of marijuana in

2004 and 1982. He was charged with possession of paraphernalia in 2000. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under drug involvement AG ¶ 26. The following two are potentially applicable:

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

(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 are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has not used illegal drugs since 2007. He regularly used marijuana while working at a casino, which was against company policy. It has been three years since his last use. I find he has abstained from illegal drug abuse for an appropriate period. I find AG ¶¶ 26(a) and 26(b) apply.

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

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person'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.

I have considered the disqualifying conditions under Criminal Conduct AG ¶ 31 and the following are potentially applicable:

(a) a single serious crime or multiple lesser offense; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Appellant has an extensive criminal history, to include a felony conviction, and convictions for Operating Under the Influence of Liquor or Drugs a DUI conviction, and several drug related arrests. I find both of the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and the following are potentially applicable:

(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.

Appellant has a significant criminal record including a felony conviction for possession of a hand gun. Most of his arrests and convictions are substance abuse related. He was convicted of Operating Under the Influence of Liquor or Drugs on June 11, 2008, and four months later was arrested for DUI. Because Applicant continues to consume alcohol, I do not believe enough time has elapsed to conclude that his criminal conduct is unlikely to recur. It has been less than two years since his last conviction. There is insufficient evidence to conclude the circumstances were unusual. Applicant sought treatment for his alcohol problems, but he continues to consume it, even though he was advised to abstain. There is insufficient evidence to conclude he is successfully rehabilitated. Therefore, I find none of the above 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. Applicant has a history of substance abuse. He attended a rehabilitation program and abstained from consuming alcohol for a period, but has resumed. It appears he stopped using illegal drugs in 2007. Applicant is conscious of his daily struggle with alcohol and its impact on his life. Until he establishes a significant period of abstinence, it is likely to continue to have a negative impact on his life. At this time, the record evidence leaves me with questions and doubts

about Applicant's eligibility and suitability for a security clearance. Therefore, I conclude Applicant mitigated the security concerns under the guideline for Drug Involvement, but failed to mitigate the security concerns arising under the guidelines for Alcohol Consumption and 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge