



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-08248  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Department Counsel  
For Applicant: *Pro se*

June 6, 2011

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) dated October 16, 2006. (Government Exhibit 1.) On October 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant responded to the SOR on November 4, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 4, 2011. A notice of hearing was issued on January 13, 2011, scheduling the hearing for February 17, 2011. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5. The Applicant called one witness, and presented seven exhibits, referred to as Applicant's Exhibits A through G that were admitted without objection. The Applicant also testified on his own

behalf. The record remained open until February 27, 2011, to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A that was admitted without objection. The official transcript (Tr.) was received on February 25, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 32 years old and is a single parent with custody of two children. He is employed by a defense contractor as an Engineering Technician and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admitted each of the allegations set forth under this guideline. (Applicant's Answer to SOR.) He has been working for his current employer since June 2008.

The Applicant grew up on an Indian reservation. He began consuming alcohol at the age of fourteen, at first about once every couple of months. He started running around with the wrong crowd and making poor decisions. On the reservation, there was a lot of alcohol and unemployment. When the Applicant consumed alcohol he drinks beer, on average 1 to 6 beers. At the age of seventeen, he decided to join the United States Navy as he was influenced by his grandfather who was a Korean war veteran with two or three Purple Hearts, and his step-father, who for health reasons was prevented from joining, but had always wanted to.

In 1997, the Applicant joined the Navy. He served honorably on active duty in the Navy for ten and a half years, and then joined the Navy reserves where he continues to serve. During his years on active duty and while overseas, his drinking increased. He continued to consume alcohol at times to excess and to the point of intoxication to at least March 2010. His excessive drinking resulted in three alcohol related arrests.

In 1997, the Applicant got into a car accident. He was driving and hit a car while turning a corner. He attempted to leave the scene of the accident when he was pulled over by the police. The Applicant was arrested and charged with (1) Fail to Stop and ID Self After Striking Unattended Vehicle, (2) Fail to Remain at Property Accident Scene, (3) Careless Driving and (4) Possession of Beer or Liquor. He was found guilty and sentenced to community service and fined. The Applicant had consumed about 8 to 10 beers prior to getting behind the wheel. He believes that he was given a light punishment by the court because he was scheduled to leave for the Navy on June 30, 1997. He completed the sentencing requirements the night before he left for basic training. (Government Exhibit 3.)

The Applicant was arrested for DUI, in September 1999, on a military base. At that time, he was referred to a Naval substance abuse rehabilitation program. He received treatment from September 1999 to October 1999, for a condition diagnosed, in part, as Alcohol Dependence. (Tr. 56.) He successfully completed the Navy treatment program, and from October 1999 to February 2000, the Applicant completely abstained from consuming alcohol. (Tr. p. 58 and Applicant's Exhibit D.)

In February 2000, the Applicant was arrested again for DUI. (Government Exhibit 4.) This time, he was sentenced to 24 months of probation, his drivers license was suspended for one year and he was required to complete community service and pay a fine. He was also required to take biweekly drug tests. Following this, the Applicant drank only on holidays or special occasions because he found out that his wife was pregnant with his second son, and he took it seriously. (Tr. p. 60.)

The Applicant explained that in August 2000, he married his pregnant girlfriend. His marriage lasted two years. He and his ex-wife decided that custody of his son would best be with the Applicant. In October or November 2004, the Applicant received custody of his first son. In February 2002, the Applicant met his second wife, and they were married in 2007. This wife, a sailor, received hardship orders and was stationed at a location where she consumed alcohol excessively and her life spiraled out of control. From 2007 to March 2010, the Applicant continued to drink alcohol, at times to excess. He drank only on the weekends. Over time, he became so disgusted with his wife's abusive drinking; and the fact that it negatively impacted his children, he stopped drinking altogether in March 2010. He also started attending Alcoholic Anonymous meetings and took the children to Alanon. (Tr. p. 73.) He filed for divorce that was final in November 2010. (Applicant's Exhibit G.)

Since March 2010, the Applicant has not consumed alcohol and states that he has no intention of ever using alcohol again. He is now a single parent with full legal custody of his two children. He states that his children are the incentive for him to remain sober. He is pleased and proud of his decisions to quit drinking. In July 2010, the Applicant was evaluated and diagnosed as Alcohol Dependent by a Certified Alcohol and Drug Counselor. (Government Exhibit 5.)

Applicant's performance appraisals for 2008, 2009 and 2010, reflect ratings of "fully meets" or "exceeds standards" in every category except two areas, Productivity, where he received a 2.8, and Organizing and Planning, where he received a 2.5, which fall under the category "needs improvement." (Applicant's Post-Hearing Exhibit A.)

The Applicant received numerous awards and commendations in the Navy including a letter of commendation for outstanding performance from March to August 2002, a Good Conduct Medal in October 2003, and three Navy and Marine Corps achievement Medals, with a gold star in lieu of the second and third awards. (Applicant's Exhibits A, B and C.)

Letters of recommendation from the Applicant's supervisor and fellow sailors who have worked closely with the Applicant over the years attest to his trustworthiness,

dependability and good judgment. He is considered competent, professional and a hard worker who sets the standard for excellence in his work ethic. (Applicant's Exhibit F.)

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline G (Alcohol Consumption)

21. *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.

#### Conditions that could raise a security concern:

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;

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;

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

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

#### Condition that could mitigate security concerns:

23.(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).

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;

- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in alcohol abuse conduct that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in Alcohol Abuse (Guideline G.) The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline G of the SOR.

The evidence shows that the Applicant is an alcoholic who has struggled with his drinking problem over the years. He was diagnosed with alcohol dependence in 1999, and again, as recently as July 2010. His abusive drinking has resulted in three alcohol related arrests that include two DUI's. Following his first DUI in 1999, despite the fact that he was referred to an alcohol rehabilitation program and successfully completed it, after a short period of abstinence, he returned to drinking. He was arrested again for DUI in 2000. Since March 2010, the Applicant states that he has completely abstained from drinking and plans to maintain sobriety. He is commended for this, however, based upon his past history of drinking, with only a year of abstinence, there is no guarantee that he will be able to maintain long term sobriety. Furthermore, based upon his past record of relapse following treatment, there is a strong chance at this point that he may return to his old habits. He has indicated that he will attend Alcoholics Anonymous meetings in the future. It is also noted that he has custody of his two children and must be responsible in order to take care of them. Hopefully he will continue to be able to maintain sobriety, and at some point demonstrate the maturity and level of responsibility required to meet the eligibility requirements for access classified information. Assuming he remains sober, the Applicant may reapply for security clearance eligibility one year from this decision and may well be qualified for access to classified information at that time.

Under Guideline G, Disqualifying Conditions 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; 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; 22. (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; 22. (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program apply. Mitigating Condition 23.(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)* arguably applies. However, it is not controlling in this case as the Applicant has an extensive history of alcohol abuse, only recently acknowledged his alcohol problem, and he has only about a year of sobriety. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.

I have also considered the “whole-person concept” in evaluating the Applicant’s eligibility for access to classified information. The Applicant is a 32 year old alcoholic who has recently come to grips with the seriousness of his drinking problem and needs more time in sobriety to demonstrate that he will not return to his old drinking habits. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has demonstrated that he is not sufficiently trustworthy, and he clearly does not meet the eligibility requirements for access to classified information at this time. Accordingly, I find against the Applicant under Guideline G (Alcohol Consumption).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

- Paragraph 1: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.
- Subpara. 1.e.: Against the Applicant.
- Subpara. 1.f.: Against the Applicant.
- Subpara. 1.g.: Against the Applicant.

## **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge