



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 10-07777 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

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

10/31/2012

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On January 11, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated February 5, 2012, Applicant admitted all allegations and requested a hearing. DOHA assigned the case to me on July 16, 2012. The parties proposed a hearing date of September 6, 2012. A notice setting that date for the hearing was issued on August 17, 2012. I convened the hearing as scheduled. Applicant testified, introduced one witness, and offered five documents, which were accepted into the record without objection as exhibits (Exs.) A-E. Department Counsel offered 13 documents, which were admitted without objection as Exs. 1-12 and Hearing Exhibit (HE) 1. The parties were given through September 14, 2012, to submit any additional material for consideration. The transcript (Tr.) of the proceeding was received on September 14, 2012, and the record was closed. Based on a review of the

testimony, submissions, and exhibits, I find Applicant met his burden of mitigating all security concerns. Clearance is granted.

### **Findings of Fact**

Applicant is a 50-year-old program manager who has worked for the same employer since October 2000. He has earned an associate's degree from a technical college and received multiple program management certifications. He is currently an undergraduate senior at a notable university, where he is working toward a bachelor's degree in electrical engineering. Applicant has excelled in his school's competitive program and maintains a 3.93/4 grade point average. He is married and has one teenage child.

In 1978, when he was about 16 years old, Applicant started imbibing alcoholic beverages. Over the next few years, he learned to equate social drinking with "partying," the goal of which was over-consumption and inebriation.<sup>1</sup> In July 1982, while unemployed and living with his parents, he was charged with and pled guilty to driving under the influence (DUI). In March 1984, he was again arrested for DUI. Although he admitted that he had been drinking alcohol, he was ultimately found guilty of lesser charges. In November 1986, he was again charged with DUI after his automobile struck another vehicle. Nobody was seriously harmed in the incident. In 1989, Applicant was cited for a fourth DUI.<sup>2</sup> As a result of this DUI conviction, Applicant lost his driver's license for a period of time.<sup>3</sup> Applicant attributes this string of DUIs to his sporadic pattern of binge drinking.<sup>4</sup>

In the summer of 1989, Applicant was charged with operating an unregistered vehicle, driving while license suspended or revoked, and display of fictitious registration. Alcohol was not involved. He was ultimately convicted of the three charges

In 1992, Applicant married. In the late winter of 1994, his automobile struck a parked car and he failed to immediately contact the authorities or leave a note on the vehicle.<sup>5</sup> Instead, he contacted the police the following morning to report the accident. He was ultimately convicted of failure to report an accident, leaving the scene of an accident, and no valid license. In the summer of 1994, Applicant became a father.

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<sup>1</sup> Tr. 63.

<sup>2</sup> The SOR reflects two charges for impaired driving in January 1989 and June 1989. One allegation is based on a police record, while the source for the other is an answer from Applicant's security clearance application. After review during the hearing, it was concluded that the two alleged incidents referenced one singular DUI charge. Tr. 30-35.

<sup>3</sup> Compare SOR and Tr. 35.

<sup>4</sup> Tr. 37.

<sup>5</sup> SOR allegation 1.c is based on Applicant's information from his security clearance application. He now believes he had the date wrong. He now places the year of the incident as the winter of 1994, not June 1998. (Tr. 38)

In March 2002, Applicant attended an after-work social which involved alcoholic beverages. On his way home, he was pulled over by the police for not maintaining a single lane. Applicant was not under the influence of alcohol at the time. He was charged with reckless driving, driving on a marked lane, and careless driving. He was ultimately found guilty of reckless driving, fined, and lost his license for 60 days. Although he was not cited for being legally intoxicated, Applicant began to realize that driving after drinking had become a far more serious issue than it had been in the 1980s. As a result, he moderated his social drinking away from home “to a degree.”<sup>6</sup>

Sometime in early 2003, Applicant discovered that, in April 2003, his wife had cheated on him. He managed his anger until one night in June 2003, when he purposefully drank to excess and verbally lashed out at her. As she began calling her aunt on the telephone, he ripped the phone from her. He also punched a wall. Applicant described it as “a heated argument resulting from a combination, I’ll say, of alcohol and unprocessed intense emotions that I just didn’t work through, that we didn’t work through properly prior to that.” The police handled the situation as a domestic disturbance. Applicant was charged with attempt to knowingly incur bodily injury to another, and criminal mischief. The charges were dismissed the following month.

Dealing with infidelity in his marriage led Applicant to counseling. The main focus of the counseling was anger management, but other aspects of his life and conduct were explored. He learned not to address his problems through the abuse of alcohol. However, it did not help him manage the binge drinking associated with “partying,” the 1980s euphemism for socializing with friends over drinks.

Although his overall use of alcohol started to decline as he grew older, Applicant met a cousin for drinks in January 2009. He got intoxicated, was pulled over by the police, charged with multiple offenses, and ultimately was found guilty of DUI. Applicant then attended an intensive 16-week alcohol treatment program. He found the program genuinely enlightening. It helped him review and analyze his drinking patterns over the years. Diagnosed as a binge drinker, he realized that he could never again drink and drive. He also began to understand that while binge drinking might have once been an accepted practice for teens and collegians in the 1980s, times had changed.<sup>7</sup> He saw that his immaturity and recklessness jeopardized not only his marriage, but his job, his ability to meet his mortgage and other obligations, his self-respect, and his relationship with his growing child. To his surprise, he was “more than willing to utilize [the program] to try to effect a change” in his behavior.<sup>8</sup> Enlightened by these epiphanies, Applicant decided it was time to demonstrate maturity, become committed to only socially drinking alcohol in a measured and moderate manner, and to never again binge drink. By the

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<sup>6</sup> Tr. 44.

<sup>7</sup> Applicant noted, “the old ways of the party drinking where you just keep going. You’re partying and it’s all about the drinking as opposed to something else.” Tr. 56.

<sup>8</sup> Tr. 53.

end of the treatment, his counselor felt that Applicant was now “in the right place.”<sup>9</sup> He has not been intoxicated since his January 2009 arrest. On the “very limited” occasions he has imbibed, he did so in front of his wife and he limited his intake to one or two beers.<sup>10</sup>

Applicant has evolved in his attitude toward drinking and personal responsibility.<sup>11</sup> Aside from only imbibing in the presence of his wife, he has made other modifications to his life to help keep his use of alcohol within acceptable parameters. He no longer stops for happy hours after work with colleagues or friends. He avoids people, places, and events he formerly associated with binge drinking and “partying.” He has not seen his cousin, who does not live in Applicant’s region, since January 2009. He and his wife only keep some wine from his wife’s favorite vineyard in their home; they periodically buy beer for guests. Applicant has had his driver’s license restored. He has had no brushes with the law since January 2009. Applicant has excelled at work, returned to college to complete his bachelor’s degree, and is currently working on additional professional certifications. He spends more time with his wife and child. Instead of cheering on sports teams in front of the television, he applies that time to home projects and handicrafts. He appreciates the time recouped in not “recovering from some night of binge drinking,” noting that such time is better spent with his family or on learning.<sup>12</sup> Applicant’s wife and certain co-workers are available to provide a support system should he need one. Moreover, he would feel comfortable attending an organization such as Alcoholics Anonymous if he felt the need for additional support.<sup>13</sup>

In addition, Applicant understands the repercussions of abusing alcohol again and failing to comport his behavior appropriately. Another DUI would result in losing his license for 10 years or more, and could result in prison time. It would compromise his marriage.<sup>14</sup> He would lose his job, thus jeopardizing his income, family, his mortgage, and other assets he treasures. Of such “negative consequences,” he noted “that, in and of itself, is very powerful. It’s a real fear.”<sup>15</sup> He is truly contrite about his past behavior.

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<sup>9</sup> Tr. 58.

<sup>10</sup> Tr. 59.

<sup>11</sup> See, e.g., Tr. 80.

<sup>12</sup> Tr. 73.

<sup>13</sup> Tr. 71.

<sup>14</sup> Applicant’s wife noted that should another lapse occur, it “would be a downfall that I think he couldn’t recover from.” Tr. 80.

<sup>15</sup> Tr. 72. Applicant further noted, “I would essentially lose everything. . . . So the terror of that is probably the biggest [motivator] and I have an independent commitment to” moving forward.” Tr. 72-73.

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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. The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>16</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>17</sup>

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 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) (prerequisites for access to classified or sensitive information). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>18</sup> Any

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<sup>16</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>17</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>18</sup> *Id.*

reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>19</sup>

## Analysis

### Guideline G – 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.<sup>20</sup> Applicant admits that since his teenage years, he equated social drinking with binge drinking. This belief continued until January 2009. In the interim, he was cited for multiple DUIs between 1982 and 2009, and a 2003 domestic disturbance that occurred after he had used alcohol. Such facts are sufficient to raise Alcohol Consumption Disqualifying Conditions 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*) and 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*). Consequently, the burden shifts to Applicant to mitigate related security concerns.

Applicant's binge drinking began as a teenager. It was during an era when the seriousness of binge drinking was not fully realized. Consequently, Applicant was arrested for four DUIs in seven years (1982-1989) before his license was suspended. In that era, DUI penalties were comparatively light. Applicant did not understand until 2002 that times had changed. However, it was not until 2009 that he fully appreciated not only that the mores of the day had changed, but that he had failed to mature properly with regard to his own personal conduct.

Applicant admits that he was a binge drinker. He completed an intensive 16-week treatment after his January 2009 arrest for DUI. He earnestly and heartily complied with the dictates of that treatment. In so doing, he embraced a mature commitment to responsible drinking. He learned to moderate his drinking; avoid people, places, and events associated with his past binge drinking; apply his energies to other outlets (*i.e.*, more time with his family, more focus on his job and profession, continuing his higher education goals, completing home projects, etc.); has avoided inebriation since January 2009; and consumed alcohol responsibly for nearly four years. Given the unique facts in this case, Applicant's delayed appreciation of the now-recognized dangers and risks associated with binge drinking, his credible testimony, and his accomplishments to date to comport his alcohol consumption within currently accepted norms, I find that Alcohol Consumption Mitigating Conditions AG ¶ 23(a) (*so much time has passed, or the behavior was so infrequent, or it happened under such unusual*

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<sup>19</sup> *Id.*

<sup>20</sup> AG ¶ 21.

*circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) and AG ¶ 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)) apply.*

## **Guideline J – Criminal Conduct**

The concern under this guideline is that 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.<sup>21</sup> Applicant was convicted of multiple DUIs between 1982 and 1989. As a consequence of his final DUI, he lost his license temporarily. During that period, he was convicted of driving an unregistered vehicle while his license was suspended, then convicted of fleeing the scene of an accident. In 2002, he was convicted of reckless driving. In 2003, a domestic dispute resulted in dismissed charges. His last criminal conduct was in January 2009, when he was cited for DUI. Such facts are particularly worrisome, and all charges and convictions pose serious security concerns. This is sufficient to raise both Criminal Conduct Disqualifying Condition AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*) and AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*). Consequently, it is Applicant's burden to mitigate the security concerns raised.

The January 2009 helped Applicant understand that "buzz driving" is not acceptable, and that binge drinking is a serious societal concern. With counseling, Applicant learned that times had changed. He then changed the way he conducted his social life in order to avoid situations where alcohol was associated with social interaction, replacing such situations with academic and familial pursuits. He chose henceforth to use alcohol minimally, and within socially acceptable limits. He has used alcohol responsibly since January 2009, nearly four years ago. In the interim, he has thrived at work, successfully maintained his marriage, supported his family, pursued further academic studies and professional certifications, honed his handyman skills, demonstrated genuine contrition, remained crime and incident-free, and generally behaved in a responsible manner. Criminal Conduct Mitigating Conditions AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) and AG ¶ 32(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*) apply.

## **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's

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<sup>21</sup> AG ¶ 30.

conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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, as well as the “whole-person” factors. Applicant is a highly credible and contrite 50-year-old program manager who has worked for the same employer for the past dozen years. As a teen and into his 20s, he adopted the viewpoint that the goal of social drinking was intoxication. He carried this attitude forward, through high school, college, and into adulthood. Although he was convicted of multiple DUIs in the 1980s, the penalties of the day – in contrast to those now imposed – were comparatively minor. Consequently, those DUIs provided no reason or motivation to comport his behavior until he was again facing a DUI charge 20 years later.

In January 2009, Applicant was cited for DUI after binge drinking while socializing with a relative. He then attentively underwent an intensive treatment program. During that program, he learned that his attitude toward social drinking as being a reason to “party” and drink to excess was flawed and dated. He also acknowledged that his behavior lacked the appropriate level of maturity of a man in his late-40s. Seeing that binge drinking was at the heart of his alcohol and legal problems, he decided to change his already waning use of alcohol. For the first time, he committed himself to cease binge and immoderate drinking altogether. To that end, he changed his activities in order to avoid tempting situations. He now spends more time with his wife and child, and uses his free time at home to work on household projects. He has also returned to college, where he is completing a bachelor’s degree with an impressive grade point average, and is pursuing additional certifications in his field. Today, he rarely imbibes. When he does use alcohol, it is in moderation and in the company of his wife. He has not been intoxicated since his January 2009 arrest, nearly four years ago.

In addition, Applicant’s commitment to drinking in moderation is complemented by a high level of motivation to avoid any criminal conduct and alcohol-related incidents in the future. Another DUI could lead to a lengthy or permanent revocation of his driving privilege, plus jail time. He is genuinely concerned that another event could cost him his job and, in turn, his home, his possessions, and his family. The prospect of such loss fills him with genuine “terror.” Given nearly four years of success and his recent maturation with regard to alcohol use, and in light of his acknowledgment of what he has to lose should he relapse, I find his actions to date significant and sufficient to mitigate security concerns. Clearance is granted.

### **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.g: For Applicant

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraphs 2.a-2.e: 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 a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge