



**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. 10-01215

**Appearances**

For Government: Kathryn D. Mackinnon, Deputy Chief Department Counsel  
For Applicant: *Pro se*

March 28, 2012

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 17, 2009. (Government Exhibit 11.) On July 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and I 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 adjudicative guidelines (AG), and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR in writing on July 29, 2011, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on August 25, 2011. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 13, 2011, and he failed to submit a response to DOHA. The case was assigned to the Administrative Judge for resolution on January 24, 2012. Based

upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 49 years old. He is employed by a defense contractor as a Machinist 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 April 2009.

The Applicant's history of alcohol abuse began at the early age of fourteen. He began drinking excessively in 1992. From 1997 to 2007, he drank at a level at which he had no recollection of his actions from the night before. He usually consumes beer, wine and vodka, and as much as a fifth of alcohol a daily. He has a significant genetic predisposition for alcohol dependence as his father, mother, maternal grandmother and brother are alcohol dependent. (Government Exhibit 5.) As a result of his excessive drinking, he incurred a number of alcohol related incidents that have negatively effected his work history and his criminal record.

He has been arrested, charged and convicted of Driving Under the Influence on at least three separate occasions discussed below. He has been fired from one job and asked to quit from another due to alcohol related issues. He has also been diagnosed as alcohol dependent. In the past he has tried to stop consuming alcohol. He has completely abstained for several months to several years before suffering a relapse and drinking again. He currently hides his drinking from his wife because she does not condone it.

In August 2005, the Applicant was fired from his job because he and his brother engaged in a fistfight when his brother discovered a bottle of an alcoholic beverage on his desk at work. The Applicant admits to consuming alcohol while on the job.

In October 2006, the Applicant was fired or asked to quit by his work supervisor because the odor of alcohol was detected on his breath.

In February 2008, the Applicant was arrested, charged and convicted of Driving Under the Influence of Alcohol. The court awarded the Applicant 30 days of confinement, directed counseling, a fine, and revocation of his driver's license. Following this conviction, the Applicant underwent counseling and treatment for his excessive alcohol use. He was diagnosed by competent medical authority as being alcohol dependent. It was at that time recommended that he completely abstain from consuming alcohol.

In December 2007, the Applicant was arrested, charged and convicted of Driving Under the Influence of Alcohol. The court awarded the Applicant 30 days of confinement, directed counseling, a fine, and revocation of his driver's license.

In July 2004, the Applicant was arrested, charged and convicted of Driving Under the Influence of Alcohol. The court awarded a fine, directed counseling, suspended confinement, and suspended his driver's license. Following this conviction, the Applicant underwent counseling and treatment for his excessive alcohol use. He was diagnosed by competent medical authority as being alcohol dependent. It was at that time recommended that he completely abstain from consuming alcohol.

From June 2008 to December 2008, he underwent treatment for alcohol dependence at a recognized mental health and substance abuse treatment center. He was discharged with a diagnosis of Alcohol Dependence; Major Depressive Disorder; Recurrent, Severe; and Attention Deficit Hyperactivity Disorder NOS, along with a recommendation to abstain from the use of alcohol and continue attending Twelve Step meetings. (Government Exhibit 5.)

Paragraph 2 (Guideline I - Psychological Conditions). The Government alleges in this paragraph that the Applicant is ineligible for clearance because his emotional, mental and personality conditions can impair his judgment, reliability, or trustworthiness, and his ability to properly protect classified information.

The Applicant admitted each of the allegations set forth under this guideline. (Applicant's Answer to SOR.)

The Applicant also has a history of mental illness or mood disorders. From January 2005 to January 2007, he received mental health counseling a clinical psychologist. During the treatment, the Applicant was diagnosed with Bipolar II Disorder and Attention Deficit Disorder, and prescribed medications, including a mood stabilizer. He was also diagnosed as Alcohol Dependent. A letter from the psychologist dated January 10, 2006, indicated that at that time it was very unlikely that the Applicant could return to work as a financial broker given the job pressures and demands consistent with successful performance as it could cause him to relapse, turning to alcohol, and requiring acute psychiatric intervention. The psychologist believed at that time that the Applicant had stopped drinking, and was working a daily recovery program. (Government Exhibit 8.)

From March 5, 2007, to March 14, 2007, the Applicant received mental health treatment from a recognized mental health facility. (Government Exhibit 7.) He was diagnosed with Schizoaffective Disorder, Bipolar Disorder Type II, and Alcohol Dependence (in partial remission.) Medical records indicate that the Applicant has a history of experiencing auditory hallucinations. His psychiatric evaluation reflects that the Applicant's history of hearing music and footsteps has occurred since childhood. In 2007, he began hearing a female voice saying threatening things to him, specifically telling him to kill himself. At that point, the Applicant had been sober for 2 1/2 months, and so he relapsed on alcohol to quiet the voice. Medical Records further indicate that

on December 15, 2007, the Applicant tried to commit suicide by drinking a fifth of alcohol and taking multiple pills. (Government Exhibit 7.)

From March 29, 2007 to March 24, 2008, the Applicant received mental health treatment overseen by the then Medical Director of the substance abuse program. During the treatment, the Applicant was diagnosed with, among other things, Schizoaffective Disorder, Mood Disorder Not Otherwise Specified, Cognitive Disorder, and Alcohol Dependence. The psychiatric evaluation dated March 29, 2007, indicates among other things that, "Client would do well in a structured setting. Would consider the Next Step program or longer term care for him. Otherwise prognosis is guarded." (Government Exhibit 5.) In March 2008, the Applicant withdrew from the program and discontinued taking his prescribed medications. (Government Exhibit 5.)

A letter dated June 18, 2010, from the current Medical Director of the counseling center states in part, [The Applicant] was initially referred to our agency on May 22, 2008 by VASAP for a scheduled intake on June 3, 2008 for an intake appointment to our outpatient substance abuse program. [The Applicant] was recommended to complete an outpatient program of 26 weeks. . . He began attending groups on June 12, 2008. He attended the weekly groups and was discharged successfully on December 4, 2008. During the course of the treatment he had perfect attendance and his written progress reports were reflective of "fair to good" progress each month. He submitted five negative urine drug screens (6/19, 7/24, 9/4, 9/25, 10/20) and four negative breath alcohol tests (7/3, 10/2, 11/13, 12/4.) His attendance at Twelve Step meetings was initially poor, but after the first month of treatment he quickly caught up his attendance and became compliant with the requirement.

[The Applicant's] discharge summary reflects that he had a "good" attitude towards treatment and he had a "good" prognosis at discharge. He was successfully discharged on December 4, 2010. His final discharge diagnosis was Alcohol Dependence, Major Depressive Disorder, Recurrent, Severe, and Attention Deficit Hyperactivity Disorder. His final recommendations were to abstain from the use of alcohol and continue attendance voluntarily at Twelve Step meetings. (Government Exhibit 9.)

## **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; and

22. (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

#### Condition that could mitigate security concerns:

None.

### Guideline I (Psychological Conditions)

27. *The Concern.* Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

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

28.(a) behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior and

28.(b) an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness.

Conditions that could mitigate security concerns:

None.

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 and have psychological conditions 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 security concerns exist with respect to the Applicant's Alcohol Abuse (Guideline G) and Psychological Conditions (Guideline I). 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 Guidelines G and I of the SOR.

The evidence shows that the Applicant is an alcoholic with a long history of substance abuse and mood disorders. He was diagnosed with alcohol dependence, and despite the fact that it was recommended that he abstain from consuming alcohol, he continues to drink. He was convicted on three separate occasions for Driving Under the Influence of Alcohol, in 2004, 2007 and 2008. He was also fired from his job in 2005, and fired or asked to quit his job in 2006 for alcohol related issues. He has received treatment for his alcohol problem but it has not been promising. Given his past history of relapse following treatment, there is no guarantee that he will be able to maintain any long term sobriety. There is a strong chance at this point that he has or will soon return to his old habits. Hopefully he will start again to work a program of sobriety, and at some point demonstrate the level of responsibility required to meet the eligibility requirements to access classified information.

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; and 22.(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker*

*who is a staff member of a recognized alcohol treatment program 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 only recently acknowledged his alcohol problem and expressed an intent to participate in an alcohol after care program to help him maintain sobriety. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.*

Turning to Guideline I, Psychological Conditions. The Applicant has been diagnosed with, among other things, Schizoaffective Disorder, Mood Disorder Not Otherwise Specified, Cognitive Disorder, Major Depressive Disorder, Recurrent, Severe, Attention Deficit Hyperactivity Disorder, and Alcohol Dependence. In 2007, he failed to follow through with the prescribed treatment regime including taking the prescribed medications necessary to control his condition. Recently, he has undergone another treatment program and has admittedly been more successful, however his prognosis is still “guarded.”

For five years, from 2005, to 2010, competent mental health professionals have evaluated and treated the Applicant’s mental condition, and have diagnosed several mental disorders. The question to be addressed now is whether the Applicant has emotional, mental or personality disorders, which can cause a significant defect in the individual’s psychological, social, and occupational functioning that may adversely affect the individual’s ability to properly safeguard classified information. Clearly the Applicant’s mental condition poses a security risk. From my evaluation of the evidence, the medical professionals that have evaluated the Applicant, including clinical psychologists, indicate that the Applicant’s psychological problems could cause a significant defect in functioning, which indicates a defect in judgment, reliability, and stability.

Applicant’s mental illnesses are not controlled or in remission, but are full blown. The nature of the illnesses compounded by his continued consumption of alcohol pose a significant security risk. To further complicate matters, in the past, the Applicant has discontinued his prescribed medication. Considering this evidence in totality, the Applicant’s mental condition demonstrates an emotional, mental, and personality condition that can impair judgment, reliability and trustworthiness and can adversely affect his ability to protect classified information.

Under Guideline I, Psychological Conditions, Disqualifying Conditions 28(a) *behavior that casts doubt on an individual’s judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;* and 28(b) *an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness apply.* None of the mitigating conditions are applicable.



The Applicant failed to submit any evidence in response to the FORM. There has been no evidence presented in mitigation significant to override the Applicant's heavy burden in this case. Applicant has not met his burden of demonstrating that his psychological condition does not raise a security concern, and Guideline I is found against the Applicant.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 49-year-old alcoholic with significant mood disorders. 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 not demonstrated that he is sufficiently trustworthy, and he clearly does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline G (Alcohol Consumption) and Guideline I (Psychiatric Conditions).

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 Paragraphs 1 and 2 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.
- Subpara. 1.h.: Against the Applicant.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: Against the Applicant.
- Subpara. 2.c.: 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