



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



In the matter of: )  
)  
) ISCR Case No. 10-02887  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

May 9, 2011  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline G, Alcohol Consumption. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On September 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, Alcohol Consumption. DOHA acted 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 on September 1, 2006.

Applicant's answer to the SOR was received by DOHA on October 12, 2010, and initially requested an administrative determination. Subsequently, Applicant retained

counsel and requested a hearing before an administrative judge. The case was assigned to me on January 18, 2011. DOHA issued a notice of hearing on January 24, 2011, and the hearing was convened as scheduled on February 16, 2011. The Government offered Exhibits (GE) 1 through 6, which were admitted into evidence. The Government's exhibit list was marked as Hearing Exhibit (HE) I. Applicant testified, called one witness, and offered exhibits (AE) A through M, which were admitted into evidence without objection. Applicant's exhibit list was marked as HE II. The record was left open for Applicant to submit additional evidence and he did so. The Government's transmittal letter responding to the additional evidence is marked as HE III, and Applicant's cover letter for the additional evidence is marked as HE IV. Applicant submitted one post-hearing exhibit that was admitted into evidence as AE N. DOHA received the hearing transcript (Tr.) on February 24, 2011.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations except for SOR ¶ 1.e. I have adopted these admissions in my findings of fact, and after a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 25 years old. He is single and has no children. He has worked as a software engineer for a defense contractor since June 2008. He is a college graduate. He has no military service. He has held a security clearance since 2008.<sup>1</sup>

Applicant's conduct raised in the SOR includes: (1) consuming alcohol, to the point of intoxication, from about 2005 (when he was 20 years old) to 2010 (admitted); (2) being arrested and convicted in October 2005, for public intoxication while underage (admitted); (3) in August 2009, consuming enough alcohol to require hospitalization and evaluation (admitted); (4) in March 2010, being transported by local police to a hospital for detoxification and refusing treatment (admitted); (5) continuing to consume alcohol, sometimes to the point of intoxication, notwithstanding his earlier alcohol incidents (denied).

In October 2005, Applicant was visiting some friends from another college. They were celebrating Halloween and they were drinking alcohol. Applicant was 20 years old at the time. He went into what he thought was a public building to use the restroom. It turned out the building was a private business and a police officer arrested him. He was charged with public intoxication as a minor. He was convicted and as part of his sentence he was required to attend an alcohol awareness course.<sup>2</sup>

On August 21, 2009, Applicant was at home drinking with his roommates. They decided to go downtown to continue their drinking at a bar. At some point, he blacked

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<sup>1</sup> Tr. at 27, 45-46; GE 1, 2.

<sup>2</sup> Tr. at 27; GE 3; Applicant's answer to the SOR (Answer).

out and the next thing he remembered was waking up in a hospital. He was taken to the hospital by the police. Applicant testified that he probably had four or five drinks that night. He further stated that he weighs 160 pounds. Hospital records from that evening show that his blood alcohol content (BAC) was .196. He refused treatment at the hospital and left after spending the night there. He was not charged with any offense.<sup>3</sup>

On March 26, 2010, Applicant was celebrating his birthday. He and some friends were drinking at various downtown bars. Applicant testified that he drank three beers and two shots of alcohol over about a three to four hour time frame that evening. After the bars closed, he was on his way home when he was questioned by police officers prior to getting a taxi. It is a civil offense to have a BAC of .08 in public in this city. The officers believed Applicant was over this threshold and tested him. He was then taken to a local hospital. Hospital records for the early morning of March 27, 2010 show that his BAC was .201. While in the hospital, counselors encouraged him to seek treatment and discussed treatment options with him. He declined any treatment and was discharged from the hospital that evening.<sup>4</sup>

According to Applicant, he currently consumes about one to two beers per weekend. He also home-brews his own beer. He was recently evaluated by a psychologist whose written evaluation stated that no alcohol abuse or dependence diagnosis was evident. The psychologist was not available for cross-examination. Applicant has attended one counseling session, but is scheduled for five more. He is not involved in alcoholics anonymous (AA).<sup>5</sup>

According to the Government's evidence<sup>6</sup>, someone weighing 160 pounds who has 10 to 11 drinks over three hours will show an estimated BAC of .182 to .205. If the drinks increase to 11 to 12 over four hours the estimated BAC will be .189 to .212. Applicant's BAC levels for both the August 21, 2009 incident and the March 27, 2010 incident were in these ranges.<sup>7</sup>

A witness testified about Applicant's good character. The witness has known Applicant for over two years. He holds a top secret clearance. He believes Applicant is a trustworthy person and recommends that he receive a security clearance. He is aware of Applicant's alcohol incidents and is concerned about his alcohol use.<sup>8</sup>

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<sup>3</sup> Tr. at 37-38; GE 3, 5; Answer.

<sup>4</sup> Tr. at 38-39, GE 3, 5; Answer.

<sup>5</sup> Tr. at 43-44; AE N;

<sup>6</sup> A blood alcohol content table that estimates BAC when drinking over a variety of time periods.

<sup>7</sup> GE 5, 6.

<sup>8</sup> Tr. at 17-25.

Applicant signed a statement of intent that he will not abuse alcohol again. He is supported by several character letters attesting to his honesty, trustworthiness, and reliability. Applicant is viewed as a valued employee and loyal friend. He also received an employment award and is noted as a “High Contributor” in his performance appraisals.<sup>9</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

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.

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 that an applicant may deliberately or inadvertently fail to 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.

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<sup>9</sup> AE A-G, I-L.

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. Two are applicable in this case:

(a) alcohol-related incidents away from, such as driving while under the influence . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependant; and

(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.

Applicant's arrest in 2005 and his two hospitalizations with significantly elevated BAC because of binge drinking were all alcohol-related incidents away from work. Both the disqualifying conditions listed above apply.

I have also considered all of the mitigating conditions for Alcohol Consumption under AG ¶ 23 and especially considered the following:

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 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.

Applicant established a pattern of abusing alcohol in 2005 and has continued that pattern through March 2010. His judgment has been impaired by alcohol on three separate incidents leading to either police involvement or his hospitalization. AG ¶ 23(a) does not apply. Although Applicant recently sought counselling concerning his use of alcohol, it is too early to tell whether that action will benefit him. Additionally, Applicant's minimization of the amount of alcohol he drank during the last two incidents indicates that he has not fully acknowledged the severity of his alcohol problem. AG ¶ 23(b) does not apply and AG ¶ 23(c) partially applies. Applicant has attended one counselling session, but has not completed the program. His psychologist indicated that he has reduced his alcohol consumption, but gave no formal prognosis. AG ¶ 23(d) does not 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. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I have considered Applicant's outstanding service to his employer, the character evidence offered by his coworkers and friends, and his recent participation in counseling. However, I am concerned with Applicant's minimization of his alcohol consumption on the two occasions when he was hospitalized. Both times Applicant stated he had a few drinks (four to five drinks, three beers, two shots), whereas his BAC results indicate a much higher level of consumption. Applicant continues to drink alcohol and brew beer. Applicant does not recognize the severity of his alcohol problem. Applicant's actions raise questions about his reliability, trustworthiness, and ability to protect classified information.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the concerns raised under the Alcohol Consumption guideline.

### **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
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Subparagraphs 1.a – 1.e:	Against Applicant
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### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge