



**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. 10-03537

**Appearances**

For Government: Robert J. Kilmartin, Department Counsel

For Applicant: *Pro se*

April 5, 2013

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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 October 21, 2011. (Government Exhibit 4.) On October 12, 2012, the Department of Defense (DoD) 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

Applicant responded to the SOR in writing on November 20, 2012, 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 Applicant on December 11, 2012. Applicant received the FORM on January 2, 2013. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant failed to submit a reply to the FORM. This case was assigned to the undersigned on February 22, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

Applicant is 57 years old and divorced. He has a high school diploma and military training. He is employed by a defense contractor as a Calibration 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.

Applicant admitted each of the allegations set forth under this guideline. (Applicant's Answer to SOR). He served in the United States Navy from December 1982 to February 1988 and received an Honorable Discharge.

He began consuming alcohol at the young age of fifteen. He explained that alcohol was readily available while growing up. He drank about one beer a week from the age of 15 to 18, and became intoxicated about once a month. From 23 to 26, he consumed three to four beers a month and did not recall becoming intoxicated during that time. From the age of 28 to 42, from 1983 to 1997, Applicant does not recall consuming alcohol because at that time he was bicycling competitively. In 1997, he began drinking a 12 pack of beer three times a week. This drinking continued until 2008. Since 2008, he consumes a 12 pack of beer over the weekends.

Applicant indicated that he likes the taste of beer and consumes it at home or with friends at their homes. He feels intoxicated after having had three or four beers in two hours without a meal. On those occasions, he is careless, has slurred speech and a loss of control. Applicant's excessive drinking has resulted in his arrest on five separate occasions for Driving Under the Influence of Alcohol (DUI) in a ten-year period. On each occasion, the charges were reduced to Reckless Driving in exchange for his guilty plea to the offenses. Applicant explained that his DUI's were triggered by stressful incidents in life, such as end of relationships, or death of a friend or his sister.

Applicant was first arrested for DUI on June 2, 1999. On July 27, 1999, he was found guilty of reckless driving and was sentenced to 90 days in jail, that was suspended, and fined \$500.00. (Government Exhibits 6 and 8.)

His second arrest for DUI was on November 1, 2001. On December 18, 2002, he was found guilty of Reckless Driving and was sentenced to 12 months in jail that was suspended, fined \$912.00, given 12 months probation (supervised), and ordered to complete an alcohol evaluation. (Government Exhibits 6 and 8.)

On January 9, 2003, Applicant completed a court ordered alcohol evaluation and was diagnosed as Alcohol Dependent. (Government Exhibit 5.) He was then ordered to seek counseling through an out-patient treatment facility where he attended Alcoholics Anonymous (AA) meetings as well as peer sessions. Following this, he received alcohol abuse counseling from January 2003 until January 2004. While undergoing treatment, Applicant was arrested a third time for DUI, on August 29, 2003.

On November 17, 2003, he was found guilty of Reckless Driving and was fined \$575.00. (Government Exhibits 6 and 8.)

On September 14, 2005, Applicant's security clearance application was denied by DoD, in part based upon his failure to mitigate concerns involving alcohol consumption. (Government Exhibits 9 and 10.)

Applicant was arrested a fourth time on December 9, 2009, for (1) DUI; (2) Fleeing or Attempting to Elude a Police Officer; (3) Reckless Driving; and (4) Failure to Maintain Lane, all misdemeanors. On February 1, 2010, he was found guilty of Reckless Driving and Failure to Maintain Lane and sentenced to 30 days in jail, suspended, and fined \$949.00 and \$585.00 for the respective offenses. (Government Exhibit 8.)

During an interview on December 21, 2011, with the Office of Personnel Management investigator, Applicant admitted that he drinks approximately 12 beers each weekend. (Government Exhibits 6 and 8). Applicant stated that he no longer drinks and drives as he believes he has too much to lose and is afraid that he may hurt someone. (Government Exhibit 6.)

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive set 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.(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; and

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

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

adverse to an applicant 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 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 or her a security clearance.

In this case the Government has met its initial burden of proving that Applicant has engaged in Alcohol Abuse (Guideline G). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, 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 Applicant has a long history of alcohol abuse. From 1999, to as recent as 2009, he has been arrested for DUI on five occasions. In 2003, he was diagnosed as Alcohol Dependent and required by court order to attend an alcohol abuse counseling program. Despite his diagnosis, he continued to consume alcohol, and in fact, was arrested for DUI while attending his alcohol treatment program. In 2005, DoD denied his security clearance in part based on his level of alcohol consumption, yet he was arrested for DUI two more times after this denial. Although his most recent arrest for DUI occurred in 2009, almost three years ago, he continues to abuse alcohol. As recent as December 21, 2001, he admitted that he still consumes 12 beers each weekend. He has not taken his disease seriously and continues to be a significant security risk to the Government since he cannot be trusted with the national secrets. Based upon his past record of alcohol abuse, Applicant is not eligible for access to classified information at this 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.(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; and 22.(f) relapse after a diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program* apply. There is no evidence in the record that any of the mitigating conditions apply. Accordingly, I find against Applicant under Guideline G, Alcohol Consumption.

I have also considered the “whole-person concept” in evaluating Applicant’s eligibility for access to classified information. Applicant has submitted no evidence in mitigation. He is a troubled drinker who has not come to realize the seriousness of his condition and its ramifications. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, supports 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.

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

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

## **FORMAL FINDINGS**

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

- Paragraph 1: Against Applicant.
- Subpara. 1.a.: Against Applicant.
- Subpara. 1.b.: Against Applicant.
- Subpara. 1.c.: Against Applicant.
- Subpara. 1.d.: Against Applicant.
- Subpara. 1.e.: Against Applicant.
- Subpara. 1.f.: Against Applicant.
- Subpara. 1.g.: Against Applicant.
- Subpara. 1.h.: Against 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 Applicant. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge