



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



In the matter of: )  
)  
) ISCR Case No. 10-03646  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

October 13, 2011

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline G, but failed to mitigate the security concerns under Guidelines J, Criminal Conduct, and E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

On April 8, 2011 and July 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, J, and E. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 6, 2011 and July 27, 2011, respectively, and requested a hearing before an administrative judge. The case was assigned to me on July 29, 2011. At the request of Applicant the case was delayed and

scheduled for September 14, 2011. DOHA issued a Notice of Hearing on August 2, 2011. The case was held as scheduled. Applicant affirmed that he received the Notice of Hearing more than 15 days before the hearing. The Government offered Exhibits (GE) 1 through 10. Applicant did not object and they were admitted into evidence. Applicant testified and offered Exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 19, 2011.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR except ¶¶ 2.a and 3.a through 3.d. I incorporated his admissions into the findings of facts. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. He has never been married and has no children. He earned a bachelor's degree in 1985. He served in the Air Force from 1987 through 1991, when due to a service force reduction he was honorably discharged. He was in the pay grade of E-4. In 1992, Applicant joined the Air Force Reserve and also began working as a civilian for the Air Force. In 2000, he joined the Air National Guard and remained until 2008. He was discharged in the pay grade of E-5. He left his civilian employment and began working for a federal contractor in December 2007. Applicant has held a security clearance at different times in the past.<sup>1</sup>

In 1993, Applicant was 33 years old and was charged with driving under the influence of alcohol. He had been drinking alcohol at a bar and was stopped by the police on his way home. He pled guilty to the charge and was convicted. He held a security clearance at the time. He thought he may have spent one day in jail. He could not clearly remember, but believed he mentioned the offense to his supervisor at the time.<sup>2</sup>

In June 1996, Applicant was charged with refusal and driving under the influence of alcohol. He was driving and was stopped by the police. He refused to submit to a breathalyzer. He pled guilty, and he believes he was given probation and a fine. He stated he was not ordered to attend alcohol counseling. He thought he reported his conviction to his supervisor.<sup>3</sup>

In 2004, Applicant was arrested and charged with operating a motor vessel under the influence of alcohol, operating a motor vessel while impaired, and failure to display a navigational light on his boat. He had been drinking alcohol on his boat with a friend. He

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<sup>1</sup> Tr. 26-30.

<sup>2</sup> Tr. 31-33.

<sup>3</sup> Tr. 33-36.

pled guilty to failing to display a navigational light and the other charges were dismissed. He did not report this arrest to his supervisor.<sup>4</sup>

In August 2005, Applicant was charged with assault and disorderly conduct. In November 2005, he pled guilty to disorderly conduct and the remaining charge was dismissed. He was fined and sentenced to six months probation, ordered to complete an anger management course and to perform 20 hours of community service. He was suspended without pay for three days and his security clearance was suspended for two months. Applicant had a verbal altercation with a coworker that escalated into physical contact. He was arrested on the military base where he worked. His case was heard at the magistrate's court held on base.<sup>5</sup>

In December 2007, Applicant was charged with attempting to drive a vehicle while under the influence, driving while impaired by alcohol, failure to drive right of center, and negligent driving. Applicant had been at the American Legion and was drinking beer. He attempted to drive home and was stopped by police. He refused to take a field sobriety test and a breathalyzer. In May 2008, he pled guilty to driving while impaired and the remaining charges were nolle prossed. He was sentenced to 60 days in jail, of which 40 were suspended. He was permitted to complete his jail time on a work release program. He was also fined and his license was suspended. He did not report his offense to his command when it happened, but rather waited five and a half months, until after his court date. His security clearance was suspended in part because he failed to report his arrest at the time it occurred. He stated he wanted to see what the final outcome of his case was before he reported it. He admitted his actions were wrong by not reporting his conduct.<sup>6</sup>

In January 2008, at the recommendation of his attorney, Applicant attended alcohol counseling. He was diagnosed with "alcohol abuse." He stated he would drink beer on the weekend, usually consuming between 6 and 15 beers at a time at a bar. He normally did not drink during the week. He admitted that after drinking at bars he would drive home or sometimes he would stay with a friend. The treatment center recommended he attend Alcoholics Anonymous (AA), but he only attended one meeting. He has had no follow-up or after care since he completed his outpatient treatment in June 2008. Applicant stated he has not consumed alcohol since his arrest in December 2007. However, in his treatment records, it noted that he self-reported that he had consumed one or two alcohol drinks over a weekend in April 2008.<sup>7</sup> Applicant believes his alcohol counselor misconstrued information or confused him with someone else that was in their group therapy and denies he consumed any alcohol after December 2007. Applicant's treatment records reported he completed his treatment. His

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<sup>4</sup> Tr. 36-41.

<sup>5</sup> Tr. 52-59.

<sup>6</sup> Tr. 41-45.

<sup>7</sup> Tr. 74-75; GE 4 at I-47.

condition on the date of his discharge on June 19, 2008 was “slightly improved” and “unimproved.” His prognosis was “good” and “guarded”.<sup>8</sup> Applicant has not had any other alcohol incidents since December 2007. Applicant stated that he works three jobs to occupy his time.<sup>9</sup> Although he attended therapy regularly while in the program, the report noted on February 25, 2008:

[Applicant] seems open to identifying changes he need[s] to [i]ncorporate in his life of recovery but finds it hard to follow through. He doesn't always see his alcohol consumption as a bad thing and lately in Group he identifies it as the juice that calmed me down. He tends to glorify his use as it served as a good purpose in protecting him from himself.”<sup>10</sup>

In July 2008, Applicant was arrested and charged with driving a motor vehicle on a suspended license. Applicant admitted the offense. In October 2008, Applicant was charged with failure to appear on the driving with a suspended license charge. He stated he never received proper notice because it was sent to the wrong address. He went to court in January 2009, and the charge was placed on the STET docket and later dismissed.<sup>11</sup>

In July 2008, Applicant was separated from the military. In October 2008, Applicant was charged with trespassing on a military base. Applicant continued to use his military identification card to gain access to the military base and use its facilities. He was aware at the time that he was not authorized to do so. He hoped he would become affiliated with the military reserves in the future, but was not at that time. He did not have retiree privileges at the time. The charge was later dismissed.<sup>12</sup>

Applicant completed a security clearance application (SCA) for his new employer and executed it on April 14, 2009. Question 22e of the SCA asked if he had ever been charged with any offenses related to alcohol and drugs. He listed his December 2007 DUI arrest. He failed to disclose the 1993, 1996, and 2004, alcohol-related offenses. He stated he did not know why he did not list those offenses. Question 22a and 22b asked if Applicant had been issued a summons, citation, or ticket to appear in court in a criminal proceeding and if he had been arrested by any police officer, sheriff, marshal, or any other type of law enforcement. Applicant failed to disclose the 2005 disorderly conduct offense, the July 2008 driving on a suspended license offense, the October 2008 trespassing offense, and the October 2008 failure to appear charge. Applicant explained the reason he failed to disclose all of these matters was because he did not recall them. He stated he had about a week to complete the SCA and he felt pressure

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<sup>8</sup> *Id.*

<sup>9</sup> Tr. 45-52, 76-77.

<sup>10</sup> GE 4 at I-62.

<sup>11</sup> Tr. 59-62.

<sup>12</sup> Tr. 62-66.

filling it out. He brought the SCA home to complete it. He now wishes he would have sought assistance in completing the application. He does not know why he only disclosed one alcohol offense, except that he did not recall the earlier ones. He stated he did not intentionally falsify the SCA and it was just a mistake. Applicant had numerous alcohol-related incidents and criminal arrests and charges. He was arrested or summoned three times in 2008. The October 2008 incidents were six months before he completed his SCA in April 2009. I did not find Applicant's testimony credible. I find he deliberately failed to disclose information on his SCA.<sup>13</sup>

On May 21, 2009, Applicant was interviewed by an Office of Personnel Management investigator. During the interview he stated he had not consumed alcohol since December 2007. His statement contradicts the alcohol treatment reports that note he self-reported consuming one or two alcohol drinks in April 2008 while in the treatment program.<sup>14</sup>

Applicant responded to interrogatories on November 27, 2010. In his response concerning his alcohol use he stated he last used it on December 17, 2007, which contradicts the alcohol treatment reports that note he self-reported consuming one or two drinks in April 2008 while in the treatment program.<sup>15</sup>

Applicant provided a character letter from his supervisor who has observed him for ten months. He stated Applicant exhibits a good attitude, a willingness to work, and applies solid maintenance skills. He is considered a viable part of the company and his experience and knowledge is instrumental in meeting the company's goals and standards of excellence.<sup>16</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are considered 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

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<sup>13</sup> Tr. 66-74, 79-81.

<sup>14</sup> Tr. 74-75.

<sup>15</sup> GE 3.

<sup>16</sup> AE A.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant may deliberately or inadvertently fail to protect 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) (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.

I have considered all of the disqualifying conditions under AG ¶ 22 including:

(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

(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.

Applicant had four alcohol-related incidents from 1993 to 2007. He received alcohol treatment from January 2008 to June 2008 and was diagnosed with alcohol abuse. There is insufficient evidence to determine the qualifications of the person who diagnosed him with alcohol abuse at the alcohol treatment facility he attended. I find AG ¶ 22(a) applies and ¶ 22(e) does not apply.

I have also considered all of the mitigating conditions under AG ¶ 23 and the following are potentially applicable.

(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); 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's last alcohol incident occurred in December 2007. He credibly testified that he no longer consumes alcohol. There is a discrepancy regarding when he last consumed alcohol. He stated he stopped after his last alcohol-related incident, however, the report from his treatment center stated that he admitted consuming alcohol in April 2008. In any event, it has been more than three years since his last use. I found his testimony credible with regard to his current use of alcohol. He successfully completed the alcohol treatment program. There is insufficient evidence to verify the qualification of the professional who provided the prognosis as "guarded" and "good", but I have considered that he completed the program and established a pattern over the past several years that he no longer consumes alcohol. I find AG ¶¶ 23(a) and 23(b) apply. I find AG ¶ 23 (d) partially applies.

## **Guideline J, Criminal Conduct**

AG ¶ 30 sets out the security concern relating to criminal conduct:

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.

I have considered the disqualifying conditions under Criminal Conduct AG ¶ 31 and especially considered the following:

- (a) a single serious crime or multiple lesser offense; and
  
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has four alcohol-related criminal offenses from 1993 to 2007. He also was charged with assault and disorderly conduct in 2005, and he pled guilty to the disorderly conduct offense. He was arrested in July 2008 for driving on a suspended license. In October 2008, he was charged with trespassing/restricted area when he used a military identification card, that he was no longer authorized to use, to obtain entry onto a military base to use its facilities. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and especially considered the following:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
  
- (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.

Applicant has an extensive criminal record beginning in 1993 and extending through 2008. He repeatedly committed alcohol-related offenses, and pled guilty to a disorderly conduct charge, driving on a suspended license, and trespassing on a restricted area. His actions reflect a continuing pattern of criminal conduct. Applicant's misuse of a military identification card that he was not authorized to use to gain access to a military base is a serious concern. Having served in the military, he is aware of the importance of force protection and the diligence of the security forces in protecting the military bases. I do not find that his criminal behavior happened under unique circumstances. Based on his extensive criminal conduct and repeated violations of the



rules, I am not convinced that similar conduct is unlikely to recur. I find his past conduct casts doubt on his reliability, trustworthiness, and good judgment. Therefore, I find AG ¶ 32(a) does not apply. I have considered that Applicant's last criminal offense occurred in October 2008 and he provided evidence of a good work record. I find AG ¶ 32(d) marginally applies.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and specifically considered the following:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant falsified material facts in his November 27, 2010 interrogatories concerning his alcohol use. He stated he stopped consuming alcohol in December 2007. That statement contradicts a report from his alcohol counselor's report that noted he self-reported using alcohol in April 2008. Applicant falsified material facts on his SCA executed on April 14, 2009, when in response to Question 22e, which required him to disclose if he ever had been charged with any offense(s) related to alcohol and drugs, he listed the December 2007 DUI offense, but failed to disclose his other alcohol-related offenses. Question 22e required Applicant to disclose other arrests, summons, and citations. He failed to disclose his arrest for assault and disorderly conduct, and subsequent conviction of disorderly conduct in 2005, his arrest for driving on a suspended license in July 2008, and the October 2008 charge for trespassing/restricted area and failure to appear. Applicant also provided false information during an interview with a government investigator when he denied he used alcohol after December 2007. I have considered all of the evidence and conclude in each instance Applicant deliberately and intentionally failed to disclose the required information. I find Applicant's personal conduct raises the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and the following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under unique circumstances that it is unlikely to recur, and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant failed to provide important information about his criminal background when he completed his SCA in April 2009. He was arrested in July 2008 for driving with a suspended license. He was charged with trespassing/restricted area in October 2008 and failure to appear the same month in a separate incident. Applicant's testimony that he did not recall other offenses was not credible. Applicant also admitted he failed to tell his supervisor about his last DUI arrest until he went to court. Although I have not considered this information for disqualifying purposes, I have considered it when making a determination about Applicant's credibility. He has exhibited a continuing course of deceptive conduct and deliberately providing false or misleading information during the security clearance process. Applicant made no attempt to correct any of his omissions. There is no evidence that he has taken positive steps to reduce his vulnerability in the future from exploitation, manipulation, or duress. He has not acknowledged his behavior. His conduct is not minor and casts doubt on his reliability, trustworthiness and good judgment. I find none of the above mitigating conditions applies.

### **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 relevant 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. Applicant served in the military and was honorably discharged. He received a positive endorsement from his supervisor. He misused alcohol in the past, but the last alcohol-related incident occurred three years ago. It appears he no longer consumes alcohol. Applicant has a history of criminal conduct and rules' violations from 1993 to 2008. In April 2009, he deliberately provided false and misleading information during the security clearance process. He did not disclose all of his past criminal conduct. His explanation was not credible. He misused a military identification card to trespass onto a restricted military base. The evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under the Alcohol Consumption guideline, but failed to mitigate the security concerns arising under the Criminal Conduct and Personal Conduct guidelines.

### **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.e:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.d:	Against Applicant

## **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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge