



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



In the matter of:	)	
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	)	ISCR Case No. 10-03933
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

December 10, 2012

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**Decision**  
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MOGUL, Martin H., Administrative Judge:

On August 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J and 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On September 5, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on October 16, 2012. DOHA issued a notice of hearing on October 16, 2012, and I convened the hearing as scheduled on November 6, 2012. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through N, which were also admitted without objection. An additional witness also testified for Applicant. DOHA received the transcript of the hearing (Tr) on November 14, 2012. The record was left open until November 20, 2012 to allow Applicant to submit additional evidence into the

record, which has been identified and entered into the record without objection as Exhibit O, Applicant did submit an additional document. Despite its late arrival, the document has been identified and entered into the record without objection as Exhibit P, and I have considered it in my decision. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, eligibility for access to classified information is granted.

### **Findings of Fact**

In his RSOR Applicant admitted SOR allegations 1.a. through 1.k., under Guideline J with explanations; and gave an explanation regarding 2.a. under Guideline G. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 31 years old. He is engaged to be married, and he has one son. He received an Associates of Arts degree in 2007. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

#### **(Guideline J - Criminal Conduct)**

The SOR alleges that Applicant has engaged in criminal acts which create doubt about a person's judgement, reliability, and trustworthiness. As reviewed above, Applicant admitted all of these allegations in his RSOR and during his testimony at the hearing.

1.a. The SOR alleges that in May 2001, Applicant was convicted of Assault on a Police Officer and Battery on a Person, Fighting in Public, for which he was placed on probation.

1.b. The SOR alleges that in September 2003, Applicant was convicted of Assault with a Deadly Weapon, in a charge of Domestic violence. He was sentenced to 31 days in jail and required to pay restitution and attend an anger management program in lieu of an extended jail sentence, and placed on 3 years probation.

1.c. The SOR alleges that in August 2004, Applicant was charged with Driving Under the Influence (DUI). In September 2004, Applicant was convicted of DUI and sentenced to serve 10 days in jail, fined, and placed on 3 years probation.

1.d. The SOR alleges that in September 2004, Applicant was charged with Public Intoxication (PI). In January 2005 Applicant was convicted of PI, sentenced to serve 10 days in jail, fined and placed on 3 years probation.

1.e. The SOR alleges that in October 2004, Applicant was charged with Driving with a Suspended License.

1.f. The SOR alleges that in January 2005 and October 2005, Applicant was charged with Probation Violation.

1.g. The SOR alleges that in August 2007, Applicant was arrested and charged with Vandalism of Personal Property and Resisting Arrest. He was convicted of a lesser sentence and sentenced to serve 4 days in jail, fined and placed on 3 years probation.

1.h. The SOR alleges that in September 2007, Applicant was arrested and charged with Disorderly Conduct/Public Intoxication. He was convicted and sentenced to serve 4 days in jail, fined and placed on 3 years supervised probation.

1.i. The SOR alleges that in October 2007, Applicant was charged with Driving Under the Influence (DUI) and Probation Violation. He was convicted of a lesser charge, fined and required to attend a court-ordered program.

1.j. The SOR alleges that in October 2007, Applicant was arrested and charged with Disorderly Conduct. Applicant testified and the record indicated that this incident is the same as 1.i., above, (Tr at 34-35.)

1.j. The SOR alleges that in June 2009, Applicant was convicted of Driving While Privileges were Suspended or Revoked, fined and placed on 3 years probation. Applicant explained that this incident occurred when he was riding in a vehicle that was being driven by his girlfriend. The vehicle started to have problems on the freeway, and she panicked and pulled over to the middle of the road. He testified that he then changed seats with her and drove the vehicle off of the highway. A police officer, who saw what happened, pulled him over and cited him for driving without a valid license. Applicant averred that that was the only time he drove while his license was suspended. Applicant believed that the probation for this incident ended in June 2012. (Tr at 35-38.) Exhibit O shows the probation ended September 3, 2012.

### **(Guideline G - Alcohol Consumption)**

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption which leads to the exercise of questionable judgement or the failure to control impulses. The following allegations as they are cited in the SOR tend to show that:

2.a. That information set forth under subparagraphs 1.c., 1.d., 1.h., and 1.i., above.

Applicant testified that from 1998 through approximately 2004, he consumed, "incredible amounts of alcohol." He was, "essentially inebriated every day," and this caused him to get, "into quite a bit of trouble," so that by 2004, he was, "essentially homeless," living in a tent by a river bed. In 2005, he learned that he was going to be a

father, and this motivated him to gradually stop drinking alcohol and resolve his legal issues, although he did concede that he had some “slip ups.” Ultimately the drinking became less and less until it stopped. (Tr at 50.) He then went to a technical college from 2005 to 2007, from which he received a degree with honors. (Tr at 33.)

Applicant averred that he has consumed no alcohol since August or September 2008, when he consumed 3 beers. He attributed his ability for total abstinence from 2008 to the present to the fact that, in 2008, he became the sole legal guardian of his son. (Tr at 39-40.) Applicant attended Alcoholics Anonymous in all of 2008 and half of 2009, to help him remain alcohol free. He stated that he stopped attending because he got busy at work and felt he did not desire alcohol any longer. He has now been present where alcohol was being consumed, and he has not had the desire to imbibe. Finally, he explained that he is hoping for advancement in his company, which will not be possible if he started drinking alcohol again, and he now surrounds himself with a group of friends who do not drink. (Tr at 39-43.) Currently, Applicant lives in a home with his son, his fiancée who has been his girlfriend for five years, and her parents. (Tr at 45-46.)

## **Mitigation**

As stated above, one witness testified on behalf of Applicant. The witness was Applicant’s fiancée, who testified that she is 25 and started dating Applicant in November 2007. When they were first dating she did see Applicant consume alcohol, but she does not drink and she did not like to watch Applicant drinking. She encouraged him to quit. She recalled that the last time she saw him drink alcohol was in 2008. The witness said they do not often go to parties, but they went to a party in 2011, and Applicant did not drink any alcohol. Finally, Applicant’s witness testified that Applicant and his son have an excellent relationship. (Tr at 64-75.)

Applicant submitted a number of documents in mitigation. These included: his academic record from his college, showing most of his grades were As and Bs (Exhibit A); a Certificate of Achievement showing Applicant earned a Highest Honors Grade Point Average of 3.83 in June 2005, and received an Associate of Science Degree in June 2007 (Exhibit C); a certificate showing Applicant received a passing score on a security exam (Exhibit D); his initial offer of employment and his promotion from his current employer (Exhibits E and F); an appreciation award he received from his employer (Exhibit G); and 12 very positive character letters that spoke in laudatory terms about Applicant (Exhibit N); and finally a Security Awareness Award that Applicant earned on November 30, 2012 (Exhibit O.)

## **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 useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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. 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 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) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **(Guideline J - Criminal Conduct)**

The Government has established that Applicant engaged in multiple acts of criminal conduct, that occurred from 2001 to 2009. I find that ¶ 31(a), "a single serious crime or multiple lesser offenses," applies in this case. ¶ 31(c), "allegations or admissions of criminal conduct, regardless of whether the person was formally charged," is also applicable to this case.

However, I find “there is evidence of successful rehabilitation;” including but not limited to the passage of time without recurrence of criminal activity, remorse,” “higher education,” and a “good employment record.” Therefore, mitigating condition ¶ 32(d) is applicable. Guideline J is found for Applicant.

### **(Guideline G - Alcohol Consumption)**

Applicant had a long history of alcohol consumption, on a daily basis, for several years. Applicant's alcohol consumption resulted in the criminal conduct and convictions listed under paragraph 1, subparagraphs c., d., h., and i. The Government established that Applicant was involved in “alcohol-related incidents away from work,” and “binge consumption of alcohol to the point of impaired judgement.” Disqualifying conditions AG ¶ 22(a) and (c) apply to this case.

In reviewing the mitigating conditions, I find that ¶ 23(a) and 23(b) are applicable because so much time has passed; Applicant has not consumed any alcohol since September 2008, more than 4 years ago. Also, Applicant has acknowledged his alcoholism and has taken several steps to overcome his problem, including attending AA, getting a degree, establishing a good employment record, and responsibly raising his son while living with his fiancée and her family. Considering ¶ 23(a) and (b), together with Applicant's very persuasive and credible testimony that he will never again consume alcohol, I find Guideline G for Applicant.

### **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. Based on all of the reasons cited above as to why the mitigating conditions apply, together with Applicant's testimony, the testimony of his fiancée, and the strong, laudatory letters of reference, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's

eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

### **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.k.:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge