



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



In the matter of: )  
)  
) ISCR Case No. 10-04789  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

June 10, 2011

**Decision**

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CURRY, Marc E., Administrative Judge:

In September 2009, Applicant, then 18 years old, was stopped twice by police for alcohol-related offenses. Applicant has not drunk any alcohol since the incidents and no longer associates with his underage friends who drink alcohol. He is a mature young man who is working, attending college, and volunteering in the community. He has mitigated the alcohol consumption security concern. Clearance is granted.

**Statement of the Case**

On December 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption. 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).

Applicant answered the SOR on January 12, 2011, admitting the allegations. On February 11, 2011, the case was assigned to me. On March 4, 2011, a notice of hearing was issued scheduling the case for March 24, 2011. At the hearing, I received four Government exhibits and Applicant's testimony. The transcript was received on April 1, 2011.

### **Findings of Fact**

Applicant is a 20-year-old single man. He has nearly completed an associate's degree in information services technology, and will be attending a four-year college in the fall. (Tr. 14, 37) He is active in his community, volunteering for Special Olympics and working with handicapped youth once per week. (Tr. 38)

Since January 2010, Applicant has been working for a defense contractor as a network technician. (Tr. 14) His duties include overseeing operations of a test flight network. (Tr. 16)

Applicant first began drinking alcohol at a New Year's Eve party in 2008. (Tr. 27) He then consumed it regularly, approximately once per month, at parties. Typically, he would consume six beers per episode.

On the evening of September 5, 2009, Applicant attended a party and consumed about four to five beers over six hours. (GE 2 at 5) While driving home, he fell asleep at a traffic light and was stopped by a police officer who cited him with possession of alcohol under age 21. (*Id.*) The officer did not arrest Applicant. Instead, he ordered him to arrange a ride from the scene. Applicant then contacted a friend who drove him home. (*Id.*)

About three weeks later, Applicant attended another party, and consumed approximately seven beers over five hours. (*Id.*) The party ended abruptly when word began circulating that the police were coming to break it up. While driving home, Applicant was stopped by the police. After failing a breathalyzer,<sup>1</sup> he was arrested and charged with driving a vehicle while under the influence, driving a vehicle while impaired by alcohol, violating license restriction, speeding, and failure to drive vehicle on right half of roadway when required. (Answer)

The court consolidated both September 2009 cases. Also, after the second incident, the state amended the first criminal petition to include the charge of attempting to drive motor vehicle with alcohol in the blood. (GE 2 at 5) At a hearing in May 2010, the court nolle prossed the charges related to the September 5, 2009 episode. As for the second episode, Applicant pleaded guilty to violating a license restriction and speeding, and the remaining charges were nolle prossed. The court then fined

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<sup>1</sup>Applicant's blood/alcohol content was .05 percent. For legal drinkers, this blood/alcohol content does not meet the legal threshold for driving while under the influence. (21 [state] Code Ann. § 16-205(b)(1)(i)). For underage drinkers, however, the blood/alcohol content cannot exceed .02 percent.

Applicant, suspended his license for a month, and sentenced him to probation before judgment. (Answer) The case was then placed on the court's inactive docket for a year. It will be dismissed if Applicant is not charged with any additional criminal infractions.

As of the date of the hearing, the case was still on the inactive docket. (Tr. 31) Applicant no longer associates with his friends who drink alcohol underage. (Tr. 32)

Applicant has not consumed alcohol since the second arrest in September 2009. He has no intention of resuming his alcohol consumption until he turns 21. Then, he will consume in moderation. (Tr. 29) Applicant has not been evaluated by a clinician, nor has he been referred to a counselor.

## **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 to obtain a security clearance.

## **Analysis**

### **Guideline G, Alcohol Consumption**

Under this guideline, "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 ¶ 21). Applicant's history of alcohol consumption and alcohol-related charges trigger the application of AG ¶¶ 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," and 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."

Applicant's use of alcohol was limited to a nine-month period after he had turned 18 and graduated from high school. Immaturity is a mitigating factor. Conversely, Applicant's behavior transcends foolish, youthful experimentation with alcohol - he was arrested for driving under the influence of alcohol three weeks after receiving an alcohol-related citation. The immaturity of this behavior must be balanced against its seriousness.

Nevertheless, he has not drunk alcohol for 18 months and has disassociated himself from his friends who still choose to indulge in underage drinking. He has been attending junior college and volunteering in the community while working for a government contractor, and plans on attending a four-year college in the fall after graduating from junior college. These responsible endeavors demonstrate maturity, and lend credibility to his contention that he will not drink any more alcohol while underage. Under these circumstances, AG ¶ 23(a), "so much time has passed . . . that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," 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 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.

I considered the whole-person factors in evaluating the applicability of AG ¶ 23 (a). Applicant has mitigated the security concern.

### **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:

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|---------------------------|---------------|
| Paragraph 1, Guideline G: | FOR APPLICANT |
| Subparagraphs 1.a-1.c:    | For Applicant |

## **Conclusion**

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

MARC E. CURRY  
Administrative Judge