



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



In the matter of: )  
)  
) ISCR Case No. 10-05715  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

June 20, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the security concerns that arose out of his criminal activities during the period of 1991 through 2008. He has not committed any criminal offenses since 2008. He also mitigated the concerns over his alcohol consumption. He has not consumed alcohol since 2007. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption). The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant answered the SOR on January 26, 2012, and requested a hearing before an administrative judge. The case was assigned to me on March 22, 2012. DOHA issued a notice of hearing on March 28, 2012, and the hearing was convened as scheduled on April 26, 2012. The Government offered Exhibits (GE) 1 through 15. GE 1 through GE 3, and GE 5 through GE 15 were admitted without objection. Applicant objected to GE 4 because it was not self-authenticating, but it was admitted over his objection because it was attached to a letter authenticating the document. (Tr. 24-25.) Applicant testified on his own behalf, called one witness, and offered Exhibits (AE) A through H, which were admitted without objection. The record was left open until close of business May 10, 2012, for receipt of additional documentation. On May 2, 2012, Applicant submitted two additional documents marked AE I and AE J. Department Counsel had no objections to AE I and AE J, and they were admitted. DOHA received the transcript of the hearing (Tr.) on May 4, 2012.

### **Findings of Fact**

Applicant is a 39-year-old employee of a defense contractor, by which he has been employed since 2007. He is married and has two children, ages 3 and 4, and two step-children, ages 19 and 11. (Tr. 61, 38-41.)

In the SOR, the Government alleged that Applicant was arrested and/or cited for criminal and vehicle code violations at least 15 times during the period of 1991 through 2008. His convictions include four incidents of driving after under the influence of alcohol. Applicant admits each of the allegations with respect to his criminal record and his alcohol consumption, as listed on the SOR. (Answer.) His criminal record is as follows.

In January 1991 Applicant was arrested and charged with Receiving Stolen Property and Theft. Applicant's friend stole athletic apparel including tennis shoes from a warehouse. Applicant permitted his friend to store the stolen goods at his home. Applicant pled guilty to Receiving Stolen Property and was sentenced to 15 months of probation, fines and costs, and five days of incarceration. (GE 5; GE 14; Tr. 55.)

In May 1991 Applicant was charged with Operating Auto Without Owner's Consent. In Applicant's March 31, 2010 interview with an authorized agent of the Department of Defense, Applicant indicated that he "stole a car with a friend . . . and took it joyriding." However, at hearing Applicant testified that he did not steal the vehicle, but that his friends picked him up in a stolen vehicle. Police records reflect that at the time of arrest, Applicant was in the driver's seat of the vehicle. Applicant was found guilty, placed on probation for three years, required to pay court costs of \$30 and restitution of \$250, and was placed on electronic surveillance for 30 days. (GE 1; GE 14; Tr. 56.)

In August 1991 Applicant was arrested and charged with Burglary. Applicant claimed that he and a friend found a purse in an ally. While they were allegedly going through the purse to find the owner's identification, the owner of the purse saw them and called the police. Applicant and his friend took money from the purse and spent it.

Applicant was arrested and charged. He did not recall the outcome of this charge. (GE 13; GE 14; Tr. 58.)

In March 1992 Applicant was arrested and charged with Burglary. Applicant was unable to recall the details of this incident. (GE 13; GE 14; Tr. 58.)

In March 1992 Applicant was arrested and charged with Criminal Damage to Property, Party to a Crime, and Theft. Applicant and two other individuals broke a window of a store, entered the store, and stole three packs of cigarettes. Applicant was 19 years old at the time of this incident. (GE 6; Tr. 59.)

In September 1992 Applicant was charged with Criminal Trespass to Dwellings. Applicant entered a residence of another person, after kicking in the door. (GE 7; Tr. 60.)

In 1994 or 1995 Applicant was charged with Driving While Under the Influence of an Intoxicant (DWI). Applicant was returning home after drinking with friends and was arrested for DWI. As a result of this arrest, Applicant was fined and placed on probation. (GE 14.)

In 1996 Applicant was arrested and charged with DWI and Operating Motor Vehicle after Revocation. He testified that he does not recall the details surrounding this incident. Applicant was found guilty and sentenced to serve 120 days in the House of Corrections for DWI, consecutively with six months in the House of Corrections for Operating Motor Vehicle after Revocation. Applicant was referred to the council on alcoholism and drug dependence where he completed a mandatory assessment. Following the completion of his assessment, Applicant participated in an outpatient treatment program and attended Alcoholics Anonymous meetings, according to court records. The record is void of any diagnosis during this treatment. (GE 2; GE 14; Tr. 60, 63.)

In 1996 Applicant was arrested and charged with Escape from Custody Pursuant to Legal Arrest for a Crime. Applicant was serving his sentence for his 1996 DUI in the House of Corrections, but he was granted work release. One night, he chose to go out drinking with his friends instead of returning to jail for the evening. Applicant was arrested a few days later. In January 1997 he was found guilty and sentenced to serve one year and one day in prison. Applicant testified he actually only served a quarter-of-a-year of this sentence in prison. (GE 3; GE 13; GE 14; Tr. 63-69.)

In June 1997 Applicant was cited for Possession of Drug Paraphernalia. The police had been called to his residence during a domestic dispute. Applicant "neglected to hide a marijuana pipe" and the police viewed it in plain sight. Applicant was cited. Applicant was intoxicated at the time of this incident. He was found guilty by default when he failed to appear in court on this charge. A forfeiture of \$283.30 was imposed. Applicant failed to pay the fine and an order was sent to the Department of Transportation to suspend Applicant's driving privileges for a period of two years. (GE 4; GE 14; Tr. 71-72.)

In 1999 Applicant was charged with DWI (3<sup>rd</sup>), and Operating Motor Vehicle after Revocation (5<sup>th</sup>). Applicant was driving home after becoming intoxicated at a party. Applicant pled guilty to both counts and was sentenced to serve 11 months in the House of Corrections, consecutive to any other sentence, with credit for 7 days served for DWI. He was placed in a work release program. He was sentenced to serve 30 days in the House of Corrections for Operating Motor Vehicle after Revocation (5<sup>th</sup>), consecutively with his sentence for DWI. (GE 8; GE 14; Tr. 73-74.)

In 2002 Applicant was arrested and charged with Operating While Intoxicated (4<sup>th</sup>), and Operating Motor Vehicle after Revocation(6<sup>th</sup>). Applicant had been consuming alcohol at the home of a female friend. He “knew he’d had too much to drink, but decided to drive home anyway.” He was stopped by the police on his way home and was arrested. Applicant had a blood ethanol concentration of 0.166% at the time of arrest. This amount exceeded the state level for intoxication. He was found guilty and sentenced to confinement in the county jail for 175 days, required to complete an alcohol assessment, pay fines and costs. He did not complete the assessment until 2008, as detailed, below. (GE 9; GE 15.)

From 1995 through 2002 Applicant was convicted for violating numerous motor vehicle violations. These offenses include a 2002 Non-registration of Vehicle citation; a 1997 citation for Exceeding Speed Zones; a 1995 citation for Operating After Suspension or Revocation; a 1995 citation for Non-Registration of Vehicle; and a 1996 citation for Fail/Obey Traffic Officer Signal/Order. (GE 10; Tr. 75.)

In November 2007 Applicant was arrested and charged with Corporal Injury to Spouse/Cohabitant. Applicant and his wife were arguing over finances and Applicant’s use of alcohol. The argument escalated and Applicant shoved his wife. Applicant left his home and called the police from a nearby pay phone. Applicant was arrested and remained in custody for three days. He pled not guilty to the charges and they were eventually dismissed. (GE 13; GE 14; Tr. 44-45, 81-86.)

In July 2008 Applicant was arrested and charged with Corporal Injury to Spouse/Cohabitant and Cruelty to Child by Endangering Health. In Applicant’s March 31, 2010 interview with an authorized agent of the Department of Defense, Applicant indicated that prior to his arrest, he had been drinking and was arguing with his wife about money and his ongoing use of alcohol. His wife claimed he bit her. His step-son intervened in their dispute and Applicant shoved him. Applicant’s wife called the police and he was arrested. Applicant’s wife and step-son did not pursue charges and the case was dismissed. (GE 11; GE 13; GE 14; Tr. 46-47, 92.)

Applicant has consumed alcohol in excess and to the point of intoxication. He began drinking alcohol at the age of 17. From age 17 to age 21, he consumed 6 to 12 beers per sitting 3 to 4 times a week. He would drink until he could not walk. “I had to drink, and drink, and drink until I would pass out,” he testified. He explained that he grew up in a family with an alcoholic single mother and an alcoholic father that rarely provided Applicant support. He testified that on several occasions, he made half-

hearted attempts to stop drinking alcohol, but that he went “right back to [drinking]” each time. He attended some Alcoholic Anonymous meetings, but did not find them helpful. (Tr. 62-63, 80-81.)

In February 2006 Applicant met his wife in an on-line game. He confided in her about his desires to stop drinking. She had been previously married to an alcoholic and understood the challenges of helping an alcoholic become sober. In March 2006, Applicant moved out-of-state to get a fresh start with his wife (then girlfriend). His level of alcohol consumption decreased after his move, but it did not stop until November 2007. His wife testified that in November of 2007, she and Applicant had the above mentioned altercation. Around that same time, Applicant had passed out in their back yard after becoming heavily intoxicated. He decided that from that point forward he would stop consuming alcohol because he did not want to lose his family. When he awoke in his yard, he prayed for the strength to permanently abstain from alcohol. He has not consumed any alcohol since that date. He recognizes that he has made “numerous mistakes and bad decisions” in his life but believes that he has permanently changed. Applicant started attending church immediately after giving up alcohol. They do not have alcohol in their home. Applicant’s wife further asserted that Applicant was not drinking at the time of his 2008 arrest, despite his statement to the investigator that he was intoxicated at the time of that incident. (AE H; Tr. 38-50; 94-97.)

From December 2008 through July 2009, Applicant met weekly with a licensed therapist. He was diagnosed with alcohol dependence. He learned how to prevent cravings and take action should they arise. Applicant’s therapist changed Applicant’s diagnosis to “Alcohol Dependence in Remission” in January 2009. Her notes indicate that at that time, “Patient remain[ed] sober since Nov. 2007” despite being stressed and angry at times. Applicant testified, and records show, that he and his wife also participated in marital counseling. (AE I; Tr. 93.)

Applicant is well respected by co-workers and is rated as a “successful contributor” in his performance assessments. He has received three peer to peer recognition awards and two cash awards for his exceptional work performance. (AE A through AE G; AE J.)

## **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 to be 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, administrative judges apply the guidelines 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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 security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and

(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant has a history of at least 15 criminal and vehicle code violations during the period of 1991 through 2008. His admitted criminal activities include a number of serious offenses like theft, burglaries, receiving stolen property, and escape from custody, in addition to four alcohol-related driving offenses and two domestic disputes. His offenses give rise to concerns about Applicant's judgment and reliability both because of the nature of the offenses and the quantity of criminal offenses. The aforementioned disqualifying conditions have been established.

Two Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

(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 a history of criminal behavior. However, his offenses occurred when he was less mature. Four years have passed since his last arrest, a domestic incident that was ultimately dismissed. Since 2006, he has married, become an active member of his church, and found meaningful employment with a government contractor. He moved away from the friends with whom he consumed alcohol and committed numerous crimes. He is now focused on being a good father to his two young children and two step-children. He has not consumed any alcohol since the domestic incident in November 2007. He has participated in alcohol counseling and marital counseling and now possesses tools to help him through stressful and upsetting situations without resorting to criminal activity. His wife and co-workers support Applicant's application and speak highly of Applicant.

Due to the recent, positive changes in Applicant's life, criminal conduct is unlikely to recur. He has demonstrated that he has successfully rehabilitated himself. He is remorseful about his past criminal activities, and has made significant efforts to change his life around. His past criminal behavior does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) apply.

## **Guideline G, Alcohol Consumption**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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;
- (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; 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 has been arrested for driving while under the influence of alcohol four times. He has also had a number of other alcohol related arrests such as his 2007 domestic incident with his wife, and his 1997 possession of drug paraphernalia charge, both of which occurred while Applicant was intoxicated. In addition, his Escape from Custody occurred as a result of Applicant's desire to consume alcohol instead of returning to serve his sentence after his work release from incarceration. Applicant admitted to a long history of binge consumption to the point to passing out that extended from age 17 through 2006 when he was 34 years old. He was diagnosed by his licensed therapist as alcohol dependent. AG ¶¶ 22(a), 22(c), and 22(e) are disqualifying.

Two Alcohol Consumption Mitigating Conditions under AG ¶ 23 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; and
- (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).

Applicant's last alcohol related incident occurred in 2007. It has been over four years since he had any alcohol-related problems. He acknowledged his issues with alcohol and has remained abstinent for over four years. He sought treatment with a licensed therapist who diagnosed him with alcohol dependence in remission. He has learned tools, other than consuming alcohol, to deal with his frustrations. He is dedicated to being a father and providing for his children. Applicant's past problems with alcohol are unlikely to recur given the new, positive influences and changes in his life. AG ¶ 23(a) and 23(b) are mitigating.

### **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. I have incorporated my comments under Guidelines J and G in my whole-person analysis.

Applicant performs well in his position at work and is a valued employee. The majority of his criminal conduct took place when he was much younger, from the ages of 17 to 34. Although his alcohol consumption carried on until 2007 and criminal conduct carried on until 2008, Applicant has not had any violations since 2008. He is now happily married and is involved in his church. He transformed his life because he did not want to lose his family and repeat the mistakes his father made with him. He has attended both alcohol counseling and marital counseling. His wife verified that Applicant has made permanent behavioral changes motivated by his love for his family. Applicant has demonstrated that there is little potential for pressure, coercion, exploitation, or duress. Given Applicant has remained sober for over four years and has received a favorable prognosis by his therapist, there is a low likelihood of recurrence.

Overall, the record evidence overcomes the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative 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 J:	FOR APPLICANT
Subparagraph 1.a~1.o:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a~2.b:	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.

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Jennifer I. Goldstein  
Administrative Judge