



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



In the matter of: )  
)  
) ISCR Case No. 10-07453  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

July 22, 2011

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated alcohol consumption and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and E (personal conduct). 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in an undated response and requested a hearing before an administrative judge. The case was assigned to me on May 16, 2011. DOHA issued a notice of hearing on June 16, 2011, and the hearing was convened as scheduled on July 12, 2011. The Government offered exhibits (GE) 1 through 3, which

were admitted without objection. Applicant testified, but she did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on July 20, 2011.

### **Findings of Fact**

Applicant is a 20-year-old employee of a defense contractor. She seeks to retain a security clearance that she has held since 2008. She attended college for a period but did not obtain a degree. She is not married. She has a baby who was born several weeks ago.<sup>1</sup>

Applicant's first experience with alcohol was in about 2002, when she drank a glass of beer. She did not drink again until 2007 or 2008, when she started drinking about once a week. She estimated that she would drink about three to four mixed drinks, beers, or glasses of wine, and that she drank to the point of intoxication about five times.<sup>2</sup>

In May 2009, Applicant attempted to drive home after becoming extremely intoxicated at a bar. She hit several bushes along the side of the road, and she sideswiped a car that had a driver and a passenger. She kept driving after hitting the car. The police arrested her after she stopped in a parking lot. Applicant admitted the facts of what occurred based upon the police report and what she was told about the incident. She has no memory of the incident, as she had an alcohol "blackout."<sup>3</sup>

Applicant was charged with driving while intoxicated (DWI). In October 2009, she pleaded guilty and was sentenced to 180 days in jail, which was suspended, probation for 18 months, a \$1,000 fine, court costs, and her driver's license was suspended for 90 days. As part of her probation, Applicant was ordered to abstain from the use of alcohol and have an ignition interlock device placed on her car.<sup>4</sup>

Applicant continued to drink alcohol while on probation. The ignition interlock device prevented her car from starting if the driver blew into the device with alcohol on their breath. In February 2010, Applicant blew into the interlock device with alcohol on her breath. She admits that she was intoxicated, but she denies that she was driving. She stated that a friend was acting as the designated driver but was unable to operate the interlock device. Applicant stated that she blew into the device in order to start the car for the friend to drive them home. She attempted to fool the interlock device by eating something before she blew into the device. The device reported the incident to the probation department.<sup>5</sup>

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<sup>1</sup> Tr. at 26-28; GE 1.

<sup>2</sup> Applicant's response to SOR; GE 2.

<sup>3</sup> Tr. at 18-20; Applicant's response to SOR; GE 2.

<sup>4</sup> Tr. at 18, 22-23; Applicant's response to SOR; GE 2, 3.

<sup>5</sup> Tr. at 21-25; Applicant's response to SOR; GE 2.

In April 2010, Applicant was determined to have violated probation, and she was ordered to serve seven days in jail. She actually served 11 days because she was in jail a few days awaiting her probation hearing.<sup>6</sup>

Applicant reported her DWI and probation violation to her company's security officer. She stated that she has not drunk any alcohol since April 2010. She admitted that she did not initially take her probation as seriously as she should have. She stated that she has learned her lesson and will not disregard the law again. Her probation ended in April 2011. She gave birth a few weeks ago. She turns 21, the legal age to drink alcohol in her state, in a few months. She stated that she does not plan to drink until she turns 21, but she may have a drink in December to celebrate the holidays.<sup>7</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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

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<sup>6</sup> Tr. at 23-24; Applicant's response to SOR; GE 2, 3.

<sup>7</sup> Tr. at 17, 23-26; GE 2, 3.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 G, Alcohol Consumption**

The security concern 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; and

(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 underage drinking, DWI, and drinking on probation establish AG ¶ 22(a). Her pattern of alcohol consumption raises AG ¶ 22(c).

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. 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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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 DWI occurred in May 2009, and she continued to drink alcohol while on probation. Applicant has not had a drink of alcohol since April 2010. However, she was pregnant and on probation for most of the period since then. AG ¶ 23(b) is partially applicable. I find that her alcohol-related incidents are recent, did not happen under unusual circumstances, and I am unable to determine that they are unlikely to recur. Applicant's alcohol consumption continues to cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 23(a) is not applicable. AG ¶ 23(b) is partially applicable. No other mitigating conditions have been raised by the evidence. I find that alcohol consumption security concerns remain despite the presence of some mitigation.

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

The security concern for personal conduct is set out in AG ¶ 15:

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. The following disqualifying conditions are potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's underage drinking and probation violations constitute conduct that created a vulnerability to exploitation, manipulation, or duress. AG ¶ 16(e) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such 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 has refrained from alcohol since April 2010, and she has been honest about her alcohol incidents, which has reduced her vulnerability to exploitation, manipulation, and duress. AG ¶ 17(e) is applicable. However, I remained concerned about her disregard for the law. I am unable to determine that such behavior is unlikely to recur. It continues to cast doubt on her reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) are not applicable. I find that personal conduct security concerns remain despite the presence of some mitigation.

### **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 G and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I believe Applicant has learned from her mistakes. However, her disregard for the law continues to concern me. She has not yet turned 21 years old. She needs to mature and establish a longer track record of obeying the law before she should have access to classified information.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated alcohol consumption and personal conduct security concerns.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge