



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



In the matter of: )  
)  
) ISCR Case No. 10-07604  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

September 19, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s history of alcohol abuse and alcohol-related criminal conduct generates a security concern. Applicant has abstained from alcohol for approximately a year and has been diligently committed to sobriety, working with a therapist and immersing himself in volunteer activities with Alcoholics Anonymous (AA). Clearance is granted.

**Statement of the Case**

On May 5, 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, J, criminal conduct, and E, personal conduct. 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 May 24, 2011, denying subparagraph 1.a and admitting the remainder. On July 5, 2011, the case was assigned to me. On July 15, 2011, a notice of hearing was issued scheduling the case for August 5, 2011. At the hearing, I received 6 Government exhibits (Government Exhibits (GE) 1-6), 18 Applicant exhibits (Applicant Exhibits (AE) 1-18), Applicant's testimony, and the testimony of 2 witnesses. At the close of the hearing, I left the record open for Applicant to submit additional documents. Within the time allotted, he submitted an additional document (AE 19). The transcript was received on August 15, 2011.

### **Findings of Fact**

Applicant is a 45-year-old man with two teenage children. He has been married for 19 years. He has a high school education.

Applicant served in the U.S. Army from 1984 to 1987. He was honorably discharged. (Tr. 26) In 1990, he joined the U.S. Army National Guard where he worked full time. He received a discharge under other than honorable conditions in 1994 after failing a urine test, testing positive for cocaine. (GE 1 at 21) Applicant admits to one-time experimentation with cocaine, but has not used it since his discharge.

Applicant is an engineering technician. He "does initial prototypes that are installed on various aircraft," and installs launch gear on aircraft. (Tr. 38) He has worked in this field for 25 years. For the past two years, he has been working for his current employer, a defense contractor. (Tr. 29) Applicant is well respected on the job. He has received multiple letters of appreciation over the past 15 years. (AE E-Q; GE 2 at 8)

Applicant has a drinking problem. He began drinking alcohol in ninth grade. (GE 2 at 3) Through high school, Applicant typically drank to intoxication. However, his drinking episodes were sporadic.

Applicant's drinking drastically increased after joining the Army. In the late 1980s, he was arrested and charged three times with driving under the influence of alcohol. (GE 2 at 3) Two of the charges resulted in probation before judgment. (1986 and 1989) The third charge, which occurred in 1988, was dropped. (*Id.*)

Under the terms of the 1989 probation before judgment order, Applicant was required to "enter a course of instruction or program of rehabilitation." (GE 6 at 4) Although Applicant remembers attending and successfully completing a 30-day inpatient rehabilitation program (GE 3 at 1), the record is unclear as to whether he completed it as part of the probation requirement for the 1989 charge.

Between 1989 and 1992, Applicant unsuccessfully attempted to quit drinking alcohol two or three times. (GE 2) In 1995, Applicant's effort at sobriety was more successful, lasting 13 years. He maintained this extended period of sobriety with the help of group counseling through Alcoholics Anonymous (AA). By the middle of the

2000s, Applicant became complacent and the frequency of his AA attendance ceased. (GE 2 at 4)

In 2008, Applicant began “sneaking drinks whenever he could.” (GE 2 at 3) As the year progressed, he began to completely lose control of his drinking. One day in May 2009, Applicant drank a pint of vodka in five minutes. (GE 2 at 4) He then “decided that [he] wanted to leave” his home. (*Id.*) His wife would not give him the car keys. Applicant then became belligerent prompting his wife to call the police.

Subsequently, a police officer arrived who attempted to calm Applicant down. Applicant was “extremely uncooperative” and began screaming and cursing at the officer. (GE 5 at 9) The police officer then arrested Applicant charging him with disturbing the peace and disorderly conduct. (*Id.*)

While en route to the local jail, Applicant became “extremely violent,” and tried to kick out the passenger window of the police car, prompting the officer to stop the car and call for assistance to help him further restrain Applicant using foot restraints. (*Id.* at 9)

As the police officers were attempting to shackle Applicant’s feet, he kicked the passenger door of the police car “which in turn struck” one of the officers in the head. (*Id.*) Consequently, Applicant was additionally charged with second degree assault and destruction of property.

Subsequently, Applicant and the prosecution reached an agreement whereupon he agreed to serve 5 days in jail and attend a 28-day work release program at an inpatient treatment facility if the state *nolle prossed* the charges. (GE 5 at 6; Tr. 49) He served the jail time and successfully completed the inpatient treatment program, but did not enroll in a recommended aftercare program, as the program director recommended. (Tr. 50)

Applicant relapsed again. On the evening of September 27, 2010, he became extremely intoxicated. His wife then took his car keys and told him not to leave the home. Applicant became enraged, slapping his wife, choking, and pushing her. He did not cease the assault until his daughter hit him with a baseball bat. (GE 4 at 10) Then, Applicant’s wife or his daughter called the police. When they arrived, Applicant was arrested and charged with first degree assault and second degree assault. He was then transported to the local hospital emergency room for a mental evaluation.<sup>1</sup> While at the hospital, Applicant attempted to escape and was apprehended. He was additionally charged with second degree escape. (GE 4 at 11)

While the trial was pending, Applicant began attending therapy. (AE D) On October 14, 2010, Applicant pleaded guilty to second degree assault and the state

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<sup>1</sup>The decision to transport Applicant to a hospital rather than a jail was made in part because his blood alcohol content was dangerously high. (GE 5 at 2)

dropped the other charges. The court then sentenced him to six months of incarceration, suspended, and six months of unsupervised probation. (Answer at 1) The court also ordered him to continue receiving therapy and to follow the therapist's recommendations. (GE 4 at 2) Applicant's wife spoke favorably on his behalf at the sentencing hearing. (GE 4 at 2)

Applicant's therapist has a PhD in clinical counseling. She wrote her dissertation on the vocational abilities of people with substance abuse issues, and has been working with such individuals for nearly 30 years. (GE D at 2) She has assisted, among other things, in writing the state's agency for rehabilitative services' policies for serving individuals with substance abuse problems. Currently, she primarily divides her time providing psychotherapy to patients and teaching classes for students seeking to become state-certified substance abuse counselors. (AE S)

For the first six months after Applicant's 2010 arrest, he received weekly hour-long psychotherapy sessions. (AE D at 2) In addition, he attended AA meetings four nights per week.

In May 2011, Applicant's therapist provided a written update of his progress. She characterized him as dedicated to "sustained sobriety," and complemented his strong relationship with his AA sponsor, his insight, and his "sincere humility." (AE D at 1) Although she acknowledged that he was in the early stages of recovery, she concluded that his prognosis for continued sobriety was positive.

Applicant's therapist is aware that he had attended an alcohol rehabilitation program in the past. However, she noted that his current program is the first one to include individual psychotherapy. She concluded her report by recommending that Applicant reduce the psychotherapy sessions to once every three months, and continue with his AA attendance a minimum of four days per week. (AE B at 2)

On August 12, 2011, Applicant's therapist provided another progress report. Noting her "good track record in looking for particular indicators of success," she concluded that Applicant was in her "highest category for sustained success." Applicant continues to see his therapist approximately once every three months. (Tr. 54)

Applicant's AA sponsor testified. He has been Applicant's sponsor both before and after Applicant's relapse. He characterized Applicant as more invested in AA now than before the relapse. (Tr. 76) Specifically, Applicant is more "willing to listen," and mentor incoming AA members. Also, Applicant is more devoted to AA's outreach programs. For example, Applicant frequently travels to the local prison and various rehabilitation centers to mentor people with substance abuse issues. (Tr. 79) Applicant has abstained from alcohol since September 27, 2010. (GE 2 at 6)

Applicant's AA sponsor works for a defense contractor as a facility security officer (FSO).<sup>2</sup> He has been in this position for 10 years. His positive opinion about Applicant's rehabilitation is based both on his experience as an AA sponsor and as an FSO who has observed recovering alcoholics who have worked for his company over the years. (Tr. 80-82)

## **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 was first diagnosed with alcohol dependence in the late 1980s. His attempts at sobriety have failed multiple times. AG ¶¶ 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of

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<sup>2</sup>He and Applicant do not work at the same company.

alcohol abuse or alcohol dependence,” and 22(f), “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation,” apply.

Applicant’s most recent relapse was less than two years ago. The AG Mitigating Condition (MC) ¶ 23(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,” is inapplicable.

Applicant has a history of previous treatment and relapse. Consequently, although he is currently participating in a treatment program and is making satisfactory progress, AG MC ¶ 23(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,” is inapplicable.

The inapplicability of AG MC ¶ 23(c) does not minimize the positive security ramifications of Applicant’s good progress in treatment and 11 months of sobriety. These factors, together with the highly favorable prognosis of Applicant’s therapist trigger the application of AG MC ¶ 23(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.”

## **Guideline J, Criminal Conduct**

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Moreover, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations,” (AG ¶ 30) In the past 25 years, Applicant has been arrested three times for alcohol-related criminal misconduct and twice for domestic violence-related criminal misconduct. He also used cocaine, an illegal drug, on one occasion in 1994. AG ¶¶ 31(a), “a single serious crime or multiple lesser offenses,” and AG ¶ 31(c), “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” apply.

Applicant’s use of cocaine occurred once more than 15 years ago, and no longer generates a security concern. All of the lingering questions about Applicant’s security concerns stem from the alcohol-related criminal conduct.

During Applicant’s 13 years of sobriety between 1995 and 2008, he committed no criminal offenses. However, within 18 months of relapsing, his criminal conduct recurred. Clearly, Applicant’s criminal violations have corresponded to the periods in his

life when he was abusing alcohol. Consequently, an analysis of whether his criminal conduct will recur must address Applicant's long-term chances of remaining sober.

Applicant has completed alcohol treatment programs in the past, and has been involved in AA more than 15 years. The quality of his current treatment and the depth of his current AA participation are significantly better than they were before the 2008 relapse. Additionally, this is the first time Applicant has ever received individual psychotherapy. Also, he not only participates actively in AA; he is a leader who mentors alcoholics in prison and rehabilitation centers. His remorseful and introspective testimony was bolstered by the testimony of his AA sponsor and the comprehensive treatment summaries of his therapist. Under these circumstances, I conclude AG ¶ 32(d), "there is evidence of successful rehabilitation; including, but not limited to . . . remorse or restitution, job training or higher education; good employment record, and constructive community involvement," applies.

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

Under this guideline, "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" (AG ¶ 15) Applicant's longstanding alcohol-related misconduct and his cocaine use, which led to his discharge from the Army National Guard, constitute personal conduct "that creates a vulnerability to exploitation, manipulation, or duress." (AG ¶ 16(e)) For the reasons set forth above, I conclude both AG MC ¶¶ 17(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 cause untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;" and 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," apply.

### **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.

Applicant's misconduct was serious, particularly the brutal, drunken assault on his wife that occurred just last year. Also, his current period of sobriety must be balanced against the fact that previous efforts at sobriety failed. The presence of rehabilitation is significant enough, however, to outweigh these negative variables.

In reaching this conclusion, I was particularly impressed by the testimony of Applicant's AA sponsor and the treatment summaries of his therapist. Both individuals vividly described the struggles of an alcoholic to remain sober, and both comprehensively described the barometers they used to measure the possibility of relapse. Their conclusions were shaped by decades of experience in working with recovering alcoholics. Specifically, the therapist's recommendations consisted of two six-month updates. Both rate Applicant's potential for sustained sobriety high. The AA sponsor's testimony effectively compared, through anecdotes, his observations of Applicant both before and after the 2008 relapse. Under these circumstances, I conclude Applicant has carried the burden.

### **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.f:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.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.

MARC E. CURRY  
Administrative Judge



