



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



In the matter of: )  
)  
) ISCR Case No. 10-07845  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

05/11/2012

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline M, Use of Information Technology Systems; Guideline D, Sexual Behavior; Guideline G, Alcohol Consumption; and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On September 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline M, Use of Information Technology Systems; Guideline D, Sexual Behavior; Guideline G, Alcohol Consumption; and Guideline E, Personal Conduct. DOHA acted 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), effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 11, 2011. He requested a hearing before an administrative judge. The case was assigned to me on January 10, 2012. DOHA issued a notice of hearing on February 9, 2012, with a hearing date of March 8, 2012. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence. Applicant objected to one exhibit, GE 5, and that objection was overruled.<sup>1</sup> Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified, and offered exhibits (AE) A through P that were admitted into evidence without any objections. Applicant's exhibit list was marked as HE II. DOHA received the hearing transcript (Tr.) on April 6, 2012.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations, except for SOR ¶ 4.a. These admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 50 years old. He is single, but in a long-term relationship. He was married twice previously. He has one adult daughter. He currently works for a defense contractor as an engineer. He began working for his current employer in 1985. He holds a doctorate degree in electrical engineering. He has no military service. He has held a top security clearance since 1985.<sup>2</sup>

Applicant's conduct raised in the SOR includes: (1) inappropriate use of computer systems such as viewing pornographic images while using a company computer, installing unauthorized software on his company computer against company policy, and failing to follow company policy (SOR ¶ 1.a); (2) soliciting the services of prostitutes on more than 50 times from about 1990 to August 2008 (SOR ¶ 2.a); (3) demonstrating excessive use of alcohol in the following manner: from 1979 to 2008, consuming alcohol to excess, including becoming intoxicated and passing out; in September 2008, being diagnosed by a qualified medical professional as alcohol dependent; from October 2008 to December 2009, attending an alcohol abuse outpatient treatment program; at various times from 1979 to 2008, routinely operating a vehicle while intoxicated; and from 1979 to 2008, having family members express their concern about his excessive alcohol use (SOR ¶¶ 3.a-3.e); (4) In November 2004, providing his second wife \$30,000 after she threatened to expose his illicit sexual activities to neighbors; participating in gambling and losing up to \$1,000 on a single occasion; in November 2008, having his SCI access revoked by another government agency (AGA); and frequenting topless bars and strip clubs after his SCI was revoked in November 2008. (SOR ¶¶ 4.a-4.d).

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<sup>1</sup> Tr. at 21-24 (It was pointed out to Applicant that he submitted as part of his Answer the same document to which he was now objecting).

<sup>2</sup> Tr. at 7; GE 1.

Applicant began drinking beer during his senior year of high school. He drank mostly at social gatherings. He continued this practice through college. Once he reached the age of 21, he began drinking with friends at bars and he would also drink at home. He drank during the week and on weekends. As he grew older, he drank more often. Starting about ten years ago, he regularly drank after work at bars, but mostly at home. His preferred drink was beer. During his thirties he would consume six to ten drinks three to four times a week. He would drink to intoxication and become more relaxed. He passed out on occasions from drinking alcohol. His excessive use of alcohol led to marital problems that resulted in his two divorces and led to health concerns. He admitted that he drove while intoxicated on numerous occasions. He also admitted that his mother, ex-wives, girlfriend, and daughter expressed concern over his drinking habits. Additionally, starting in about 1990, he solicited prostitutes approximately 50 times. This often occurred at massage parlors. His current girlfriend is unaware of his most recent solicitation of prostitutes in about October 2008. He also gambled, losing up to \$1,000 on a single occasion.<sup>3</sup>

In September 2008, Applicant was evaluated by a clinical psychologist from another government agency (AGA) concerning his alcohol use. After a clinical interview, a review of his records, and conducting several tests, Applicant was diagnosed as alcohol dependent, with psychological dependence. The findings also included the following language: "His judgment is grossly impaired. Due to his poor insight and ambivalence about treatment and abstinence, the prognosis is extremely poor." In October 2008, he sought treatment at an inpatient recognized alcohol treatment program. Upon entry, he was diagnosed by a licensed drug and alcohol abuse counselor as alcohol dependent. He was discharged in November 2008 after developing a continuing care plan. Recommendations for continuing care included attending 12-step meetings. His discharge prognosis was good, if he followed the aftercare recommendations. His discharge diagnostic impression was alcohol dependence.<sup>4</sup>

Applicant stated that he has been sober since October 2008. He also disagrees that he is alcohol dependent. He offered an earlier diagnosis by his personal psychologist who saw him from April to August 2007, who stated "he was never seen as alcohol dependent." Applicant characterizes himself as an alcohol abuser. He does not attend 12-step meetings and does not have an Alcoholics Anonymous (AA) sponsor. He stated he practices the 12-step principles of AA.<sup>5</sup>

Applicant married his second wife in 2000, but they separated in 2002 when she discovered he was involved with prostitutes. During the separation, Applicant provided most of his wife's support. At some point his wife told him that unless he gave her

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<sup>3</sup> Tr. at 51-58, 74, 86-88; GE 5.

<sup>4</sup> Tr. at 55-58; GE 5-6.

<sup>5</sup> Tr. at 56, 103; GE 5-6.

\$30,000 she would tell the neighbors about his sexual activities. He would have been embarrassed if she told the neighbors, but he claims he did not provide her the money for that reason. Rather, he felt an obligation to support her because his actions caused the end of the marriage. He provided over \$35,000 in cash payments to her during their separation. This money was in addition to mortgage payments and other expenses he paid for her.<sup>6</sup>

On November 12, 2008, AGA revoked Applicant's SCI access based upon alcohol consumption and sexual behavior security concerns. Applicant also admitted that he continued to frequent topless bars and strip clubs after his access was revoked and after he stopped drinking alcohol. He stated he kept going to these places because that was where his friends were located. He stated he stopped going to these places about one year ago and has a new circle of friends.<sup>7</sup>

In May 2009, Applicant's employer discovered that his company laptop computer contained pornographic material and personal software that was not authorized. The software included secure deletion tools and other software designed to interfere with his employer's ability to monitor personal files and software created and maintained on his computer. Applicant admitted violating his company's policies by uploading the unauthorized software and by viewing and storing pornographic material on his company computer. He also admitted that he placed the deletion software on the computer to keep his personal files from being discovered. This incident came to his company's attention when his computer contracted a virus, not because he voluntarily disclosed the information.<sup>8</sup>

Applicant presented the statements from his human resources manager and a coworker. Both statements recommend him for a security clearance. He is characterized as dependable, reliable, hardworking, conscientious, and honest. His girlfriend also provided information on how their lives have changed since he stopped drinking alcohol in 2008.<sup>9</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 used in evaluating an applicant's eligibility for access to classified information.

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<sup>6</sup> Tr. at 61, 64, 66; GE 5; AE A.

<sup>7</sup> Tr. at 78, 80; GE 5.

<sup>8</sup> Tr. at 49-50; GE 5, 7.

<sup>9</sup> AE M-N; Answer.

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 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 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 that an applicant may deliberately or inadvertently fail to 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 M, Use of Information Technology Systems**

AG ¶ 39 expresses the security concern pertaining to use of information technology systems:

Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the

willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

AG ¶ 40 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(e) unauthorized use of a government or other information technology system; and

(f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations.

Applicant used his company computer to view pornographic images. He also loaded personal software onto his company computer against company policy. He acknowledged that he loaded this particular software to keep his company from monitoring his personal files. Both AG ¶ 40(e) and AG ¶ 40(f) apply.

I have considered all of the mitigating conditions under AG ¶ 41 and considered the following relevant:

(a) so much time has elapsed since the 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.

Applicant's conduct was discovered in 2009, only after his computer had contracted a virus and it had to be sent to the company's information technology (IT) section. This is when the unauthorized software and pornography were discovered. Applicant's admission of intentionally placing software on his computer to cloak his files from company observation shows a degree of unreliability, untrustworthiness, and bad judgment to cause great concern over his security worthiness. AG ¶ 41(a) does not apply.

#### **Guideline D, Sexual Behavior**

AG ¶ 12 expresses the security concern:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference

concerning the standards in this guideline may be raised solely on the basis of the sexual orientation of the individual.

I have considered all of the Sexual Behavior disqualifying conditions under AG ¶ 13 and considered the following relevant:

(b) a pattern of compulsive, self-destructive, or high risk sexual behavior of that the person is unable to stop or that may be symptomatic of a personality disorder;

(c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and,

(d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant admitted soliciting prostitutes on about 50 occasions, visiting strip clubs, and viewing pornography on his company computer in violation of company policy over an extended period (1990-2011). He engaged prostitutes when he was married and his current girlfriend is currently unaware of his most recent use of prostitutes in 2008, which was during the course of their relationship. He also deceived his company by placing software on his computer that would mask his personal pornography files. He continued to visit strip clubs after he stopped drinking because his friends were at those places and only stopped these visits in the last year. Applicant demonstrated a pattern of compulsive sexual behavior that he was unable to stop. This behavior puts him in a position of vulnerability to coercion. An example of this is his unwillingness to tell his current girlfriend the full extent of his solicitation of prostitutes, which places him at risk of exploitation. All of his actions regarding use of prostitutes, putting pornography on his company computer, and visiting strip clubs reflect a lack of discretion and judgment. AG ¶¶ 13(b), 13(c), and 13(d) all apply.

I have considered all of the Sexual Behavior mitigating conditions under AG ¶ 14 and considered the following relevant:

(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and,

(d) the sexual behavior is strictly private, consensual, and discreet.

Although Applicant's last admitted use of prostitutes was in 2008 and the last time pornography was discovered on his company computer was 2009, the number of

times he solicited prostitutes and the efforts he took to cloak his unauthorized use of pornography do not support the conclusion that the behavior is unlikely to recur. Moreover, his actions cast doubt on his reliability, trustworthiness and good judgment. Because his girlfriend remains unaware of his most recent use of prostitutes, his behavior serves as a basis for coercion, exploitation, or duress. His visits to strip clubs and his conduct in placing pornography on his company computer were not discreet actions. AG ¶¶ 14(b), (c) and (d) do not apply.

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

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. Four 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;

(d) diagnosis by a qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence; and

(e) evaluation of alcohol abuse or dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's pattern of drinking from 1979 to 2008, including his admissions about driving while intoxicated on numerous occasions, and his diagnosis of alcohol dependence, support the application of all the above disqualifying conditions.

I have also considered all of the mitigating conditions for Alcohol Consumption under AG ¶ 23 and found the following relevant:

(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); 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.

Although Applicant's last admitted use of alcohol was in 2008, before he entered a treatment program, his past pattern of alcohol use does not convince me that his conduct will not recur. These incidents were not infrequent, nor did they happen under unusual circumstances. Moreover, because he engaged in the sexual behavior previously described while he was drinking alcohol, his actions cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 23(a) does not apply.

Applicant finally acknowledged his issues of alcohol abuse and sought treatment in 2008. Although he was diagnosed by two different medical providers as alcohol dependent, he considers himself an alcohol abuser. He claims alcohol abstinence since 2008 and there is no record evidence to the contrary. AG ¶ 23(b) applies.

Applicant successfully completed an inpatient alcohol treatment program in 2008 and a follow on outpatient program in 2009. Through these treatment programs he established a pattern of abstinence. However, he has not continued with the treatment recommendation of participating in 12-step meetings. This is significant because his prognosis of "good" was conditioned upon him following his aftercare recommendations. Therefore, AG ¶ 23(d) only partially applies.

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

AG ¶ 15 expresses the security concern for personal conduct:

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 in this case. The following disqualifying conditions are relevant:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's reaction to his wife's (at the time) threat to reveal his sexual activity with prostitutes unless he paid her money was to continue to provide her monetary support. He did not want to be embarrassed by this information. AG ¶ 16(e) applies. Applicant's gambling activities, the revocation of his SCI access by AGA for alcohol consumption and sexual behavior concerns, and his action in frequenting strip clubs while appealing his SCI access revocation clearly show a whole person assessment of lack of judgment, untrustworthiness, and unreliability. AG ¶ 16(c) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and especially considered the following:

(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 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's giving his wife over \$30,000 after she threatened to expose his sexual activities to neighbors is not a minor concern. His action casts doubt on his reliability, trustworthiness, and good judgment. Having his SCI access revoked by AGA and continuing to attend strip clubs while his case was under appeal also cast doubt on

his reliability, trustworthiness, and good judgment. He stopped gambling after he stopped using alcohol, thereby reducing his vulnerability to exploitation. He also has acknowledged his behavior and obtained alcohol counseling. AG ¶ 17(c) does not apply. AG ¶ 17(d) partially applies. AG ¶ 17(e) applies to the gambling allegation and partially to the other Guideline E allegations.

### **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. I considered Applicant's 27-year service to his company. I also considered the seriousness of his actions. Additionally, I considered his alcohol treatment program and the strong recommendations he received from friends and coworkers concerning his honesty, reliability, and trustworthiness. However, Applicant's alcohol dependence is longstanding. Although he has been sober for three years, given the extent of his alcohol abuse and the related activities he engaged in while drinking (soliciting prostitutes, drunk driving), not enough time has passed to convince me that his drinking and related activities will not recur. This is particularly so since his computer-related transgression took place after he completed his alcohol treatment program. Applicant engaged in numerous types of behavior that raises security concerns and did not meet his burden to provide sufficient evidence to mitigate those concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline M, use of information technology; Guideline D sexual behavior; Guideline G, alcohol consumption; and Guideline E, personal conduct.

## 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 M:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline D	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline G	AGAINST APPLICANT
Subparagraphs 3.a – 3.e:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant
Subparagraph 4.b:	For Applicant
Subparagraphs 4.c – 4.d:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge