



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-09328
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq.

November 10, 2011

**Decision**

LYNCH, Noreen A, Administrative Judge:

On June 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline H (Drug Involvement) and 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on July 25, 2011. A notice of hearing was issued on August 12, 2011, and the case was heard on September 15, 2011. Department Counsel offered four exhibits, which were admitted without objection as Government Exhibits (GE) 1-4. Applicant testified and submitted exhibits AE A through P at the hearing, which were admitted. He presented the testimony of two witnesses. Based on a review of the pleadings, submissions, testimony, and exhibits, I find Applicant met his burden regarding the security concerns raised. Security clearance is granted.

## Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. He graduated from high school in 2003. He obtained his undergraduate degree in 2007 and his graduate degree in 2010. (GE 1) Applicant is single and has no children. Applicant seeks his first security clearance. He has worked for his current employer since May 2009.

Applicant used marijuana in high school in 1999. He continued to use marijuana on an intermittent basis from 1999 until March 2009. He acknowledged that he used marijuana in social settings for recreational use. (GE 1) Applicant believes he used marijuana approximately once every two years except for the period of 2005. (Tr. 60) In 2005, he estimates that he used it on multiple occasions during a week of vacation. (Tr. 40)

Applicant used Adderall once or twice a semester during final examinations. (Tr. 70; GE 3) In 2003, he obtained the drug during finals to stay awake. He did not have a prescription for the drug. The Adderall belonged to his sister. (Tr. 74) He estimates that he used it about ten to twenty times from approximately 2003 until 2009. (Tr.43 )

In October 2009, Applicant and his girlfriend had an altercation. They had been out drinking in a bar. Applicant's girlfriend "drank heavily." Applicant was also drinking but he recalls only having a few drinks. (Tr. 49) After they returned to her campus room they retired for the evening. Applicant's girlfriend started arguing with Applicant in the early morning hours. She hit him and he pushed her back. As a result, the resident assistant called the campus police. Applicant was arrested for Assault and Battery. He took a Breathalyzer test and registered a .06% BAC. His girlfriend registered a .19% BAC. The charge was nolle prossed and subsequently expunged in 2011. (GE 4) Applicant has no prior criminal record.

After the incident with his girlfriend, Applicant sought counseling. He met with a psychologist from the university counseling service. (AE H) He attended two sessions in November 2009. It was not deemed necessary for Applicant to continue with sessions. Applicant ended the relationship with this woman. (GE 2) Applicant had an evaluation for anger management but no issue presented. He does take responsibility for his role in the incident.

Applicant voluntarily disclosed the illegal use of marijuana, and Adderall in his May 25, 2010 security clearance application. He was candid and forthright and wrote a very detailed description in the comments section about the Assault and Battery in 2009. He stated that the most significant marijuana use consisted of recreational use, He made the unwise decision to use marijuana at the encouragement of his peers. Applicant is embarrassed about his marijuana use. (GE 2) He admitted that he drinks and sometimes to intoxication but that alcohol is not a problem in his life. With the exception of the October 2009 incident with his girlfriend, alcohol has not had any negative impact on his life.

Applicant signed a notarized statement of intent to abstain from using illegal substances, including marijuana in the future and under any circumstances. He agrees to an immediate revocation of his clearance if he is in violation of his agreement. (AE I) He also submitted a recent drug screening. (AE P) When Applicant was hired in 2009 for his current employment, he passed a drug test. (Tr. 47)

At the hearing, Applicant was sincere that the illegal drug use was out of character and based on immaturity and that it will not occur in the future. He knows that he made poor choices and has learned his lesson. He recognizes the concerns that DoD has with any use of illegal drugs. He takes his job seriously. He enjoys the work that he has done for the Government during the past years. He is dedicated to his position and wants to continue his work. His last use of any illegal substance was in 2009. (Tr. 43) Applicant does not want to damage his good reputation at work. He emphasized that he is now more mature and recognizes that everything action has a consequence. (Tr. 95) He is clear that the Government needs to trust one to make sound judgments. These judgments include decisions made outside of work.

Applicant was candid that his current roommate used marijuana. However, Applicant has explained that he does not wish to be in the presence of anyone when they are using marijuana. He denied the allegation that he associates with persons who use illegal substances. Applicant's last exposure to marijuana was more than two years ago. (Tr. 81)

Applicant drinks socially. He does not drive after an evening of drinking. He does not drink more than two or three drinks in one night. He goes out socially with friends on the weekend. When he drinks, he drinks beer. Once in a while, he has a vodka tonic. He does not drink at work. He does not have any diagnosis of alcohol abuse or dependence.

Applicant's cousin testified that he has noticed a behavioral change in Applicant during the past two years. He is familiar with the SOR and the reasons for the investigation. Applicant's cousin knew about the incident in October 2009 with Applicant's girlfriend. He describes Applicant as career oriented and caring about his work. He socializes with Applicant on weekends. He has not seen him use marijuana for several years. He visits Applicant in his home and has not seen any indication that there is an issue with illegal drugs or alcohol. (Tr. 24)

Applicant's college friend testified that she is familiar with the SOR allegations. She has seen Applicant mature in the five years that they have known each other. She has never seen him intoxicated. She knew about Applicant's former girlfriend and describes her as a person with an anger and drinking problem. Applicant has been a good friend and advisor to her. She describes him as reliable and responsible.

Applicant submitted several employment appraisals. His 2011 appraisal notes that his work is outstanding, and he far exceeds expectations. (AE O) He has demonstrated an ability to deliver outstanding work product, exceeding expectations in both quantity and quality.

Applicant submitted eight references and letters of appreciation. His technical manager describes Applicant as having a strong work ethic and enthusiasm for his work. He is an exceptionally diligent and responsible employee. Applicant is motivated by a sincere desire to serve the public interest. (AE A-G) Applicant received an excellence award from his employer in May 2010.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The U. S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to Drug Involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

include: (a) Drugs are defined as mood and behavior altering substances, and

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted using marijuana and Adderal on various occasions from 1999 until 2009. He first used marijuana in high school in 1999. In 2005, he used marijuana almost daily on a vacation. ¶ 25(a) and (c) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's last use of any illegal drug was in 2009. He signed a notarized statement of intent to abstain from drugs and accept an automatic revocation of clearance for any violation in August 2011. Applicant's use of marijuana and other drugs occurred before he completed a security clearance application. He volunteered all the information on his security clearance application. It is more than two years since his last illegal drug use. Applicant presented as sincere and mature. He is working successfully in a position. He accepts responsibility for his actions but attributes his poor choices to the relationship with his former girlfriend. He has no criminal record. He has been open and honest with the Government. I found him to be credible at the hearing. He recognizes the privilege of having a security clearance. His letters of recommendation speak to his character. He has mitigated the concerns under the drug involvement guideline.

### **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, "(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."

In this case, Applicant acknowledges drinking on the evening of October 2009. He was arrested for Assault and Battery with involvement of alcohol after he and his girlfriend had an altercation. He obtained counseling. He was not diagnosed with any alcohol abuse or dependence. He drinks in social settings. He acknowledged that he has drunk to intoxication approximately two or three times a month. AG ¶¶ 22 (a) and (c) apply.

AG ¶ 23 provides conditions that could mitigate security concerns:

(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.

After his 2009 arrest, Applicant obtained counseling. He ended the relationship with his girlfriend. Applicant has not been diagnosed with an alcohol problem. He has had alcohol counseling. In those classes, the counselor did not believe that Applicant had a problem with alcohol. He underwent and successfully completed his sessions without any need for a structured aftercare. Applicant drinks in moderation in social settings. Applicant has taken full responsibility for the 2009 incident. He disclosed in detail the event on his security clearance application. Now his work is his focus. Applicant has mitigated the alcohol consumption concerns under AG ¶¶ 23(a), (b), and (d).

### **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. Applicant is a credible and forthright 27-year-old employee of a contractor. He is a respected employee. He has many letters of recommendation. He is motivated to succeed. He has shown insight into his previous behavior. Given these facts, and in light of a thorough consideration of the whole-person factors, I have no concern that Applicant will use illegal drugs. Applicant drinks in social settings. He has taken the issue of alcohol and how it can negatively impact his life seriously.

In sum, Applicant is not the same as he was before the 2009 incident. He has matured. He is resolute and responsible. He wants to succeed in his profession. He has learned a lesson. Applicant has matured since 2009.

Overall, the record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his alcohol consumption.

### **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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

## **Conclusion**

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

NOREEN A. LYNCH  
Administrative Judge