



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-11030
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: Ronald C. Sykstus, Esq.

12/31/2012

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline G, alcohol consumption. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On June 20, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G. 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 12, 2012, and requested a hearing before an administrative judge. The case was assigned to me on November 6, 2012. DOHA issued a notice of hearing on November 16, 2012. I convened the hearing as scheduled

on December 4, 2012. The Government offered Exhibits (GE) 1 through 7, and they were admitted into evidence without objection. Applicant offered Exhibits (AE) A through Y, and they were admitted into evidence without objection. Applicant and eight witnesses testified. DOHA received the hearing transcript (Tr.) on December 11, 2012.

### **Findings of Fact**

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 45 years old. He has a bachelor's degree and works in the systems engineering field. He married in 2003 and has a seven-year-old daughter. His wife is employed as a teacher.<sup>1</sup>

Applicant did not struggle with alcohol abuse until approximately 2006. Around that time, his employer initiated an investigation into suspicious activity regarding Applicant's company's laptop computer. He was on administrative leave for six weeks until the investigation was completed. Specifically, the investigation involved Applicant allegedly accessing pornography on the computer. He admitted to surfing the web and accessing adult pornography. The investigation also revealed there were seven to eight personal photos of a sexual nature on his computer.<sup>2</sup>

Applicant was devastated. While he was at home on administrative leave, he worried and began to drink alcohol during the mornings and afternoons. He was permitted to return to his work facility, but could not have access to the government network. He became frustrated and continued to drink alcohol. In approximately December 2006, the investigation was completed. In January 2007, the results of the investigation determined that Applicant was surfing the internet for adult pornography on his company computer, and there were some private personal photos also on the computer. His employer gave him the option to resign or be terminated. He chose to resign. His wife was aware of his inappropriate use of his computer.<sup>3</sup>

Applicant looked for a new job and continued to drink alcohol. He was hired in approximately March or April 2007 and worked until July 2007. In June 2007 he was advised that his security clearance was reinstated. During this period of time he continued to drink alcohol, but stated his consumption was reduced.<sup>4</sup>

Applicant was aware at this point that his drinking had become problematic. He thought he needed professional help. He sought help from the county mental health

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<sup>1</sup> Tr. 26-27, 33.

<sup>2</sup> Tr. 35-40, 64-65.

<sup>3</sup> Tr. 35-40, 64-65.

<sup>4</sup> Tr. 40-41.

center for depression and alcohol consumption. He was diagnosed as an alcohol abuser. He received some treatment, but had to leave the facility because his health insurance would not cover the cost of treatment.<sup>5</sup>

Applicant stated he was aware that something in his life had to change, and in July 2007, he received inpatient treatment at an alcohol treatment center and was diagnosed with alcohol withdrawal and dependence. He voluntarily sought this treatment. The normal course of inpatient treatment is 14 to 28 days. Applicant's health insurance would only pay for eight to nine days. He was isolated from external factors while he was an inpatient, so he progressed through treatment. He was discharged and went back to work with his former employer. He was told by the treatment counselor to participate in the follow-up outpatient program. He attended a couple of Alcoholic Anonymous (AA) meetings and some of the program's aftercare sessions, but he did not participate regularly or consistently in either. He casually began to resume drinking alcohol and did not perceive he was having any problems. He stated he did not consume alcohol for two and half weeks after his discharge.<sup>6</sup>

From January 2008 to June 2009, Applicant received treatment from the state psychiatric services for depression and alcohol dependence. The treatment consisted of a six-week intensive outpatient treatment program, follow-up meetings with a physician and weekly aftercare meetings. Applicant admitted he participated only intermittently and discontinued at some point because he was back at work.<sup>7</sup>

In August 2009, Applicant's consumption of alcohol began increasing. He had an incident at work where he failed to report for two days without telling his customer or employer. He stayed out of work for a couple of more days while he arranged to go back into treatment. His wife was unaware that he was staying home and not going to work. In September 2009, he received inpatient treatment again and completed the full course of treatment. He resumed drinking casually around October 2009 when he and his family went on vacation. In November 2009, Applicant and a coworker traveled to a foreign country to provide two weeks of training to that country's military. Applicant participated in the first week of training. He began drinking alcohol the second week and made excuses to his coworker that he was not feeling well enough to work. He would stay at the hotel during the day and continue to drink alcohol. His employer learned of his actions, and he was terminated.<sup>8</sup>

Applicant was depressed and drinking. In February 2010, Applicant stated he got seriously involved in his recovery. He began looking for a job. He resumed his attendance of AA meetings and was working with a sponsor a couple of times a week.

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<sup>5</sup> Tr. 41-44. This is outlined in SOR ¶ 1.a.

<sup>6</sup> Tr. 44-46.

<sup>7</sup> Tr. 46.

<sup>8</sup> Tr. 47-50, 75-78, 81-90.

He admitted to himself he had a serious problem with alcohol dependence. Applicant stated he did not drink any alcohol from February 2010 until May 2011.<sup>9</sup>

In late April 2011, Applicant's community experienced a devastating tornado. Because they were without electricity they cooked on outdoor grills. On May 1, 2011, they learned that the terrorist Osama Bin Laden had been killed. His neighbor brought out a bottle of alcohol to pass around as a toast in celebration. Applicant stated he took a swig from the bottle. He stated he did not really think about it. His old pattern of thought came to him and he thought perhaps it was okay to have a drink now and again. He wrestled with whether to tell his AA sponsor. He decided to tell his sponsor and recommit to the AA program. He credibly testified he has not consumed any alcohol since May 1, 2011.<sup>10</sup>

Applicant admitted that he was stubborn about his recovery. He finally got to a point where he got tired of his struggle with alcohol. He has now chosen to live a life of principles and sobriety. He has the support of AA, his family, and his friends. It is an ongoing process.<sup>11</sup> Applicant stated that although he is not consuming alcohol, he has to pay attention every day and be mindful of his recovery. He has accepted that he is an alcoholic. He attends AA meetings a couple of times a week. He talks to his sponsor. He helps organize and participates in meetings at the treatment center where he attends. He attends at least two AA meetings a week, sometimes he attends three to five meetings, depending on his schedule. He has completed the 12-step program of AA and is continuing to work through the steps again. As he gets further away from his last drink there is less of a daily struggle, but he continues to be vigilant. He is committed to staying sober each day.<sup>12</sup> Applicant stated:

I'd like to give you 100 percent assurances that I will never take a drink again. And I feel the chances are very close to that if I continue to do what I've become comfortable with doing on a daily basis and, you know, practicing these principles. And I've got a good support system both AA based and family and friend based. And I feel confident about that.<sup>13</sup>

Applicant's wife became aware that his drinking was becoming problematic and his consumption was increasing. She is supportive in his sobriety and attended a three-day program for family members of alcoholics provided by his treatment center to educate her on how to help him with his sobriety and recovery. She also attends Al-Anon when she feels she needs the support. She believed Applicant had difficulties

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<sup>9</sup> Tr. 50.

<sup>10</sup> Tr. 52-54, 79-81.

<sup>11</sup> Tr. 55-56.

<sup>12</sup> Tr. 57-58, 78, 183.

<sup>13</sup> Tr. 58.

believing he was a good husband and father, and so he would drink. She is convinced her husband is committed to sobriety. He has made a commitment to be employed and is fully vested in his efforts to change his ways. She believes he now realizes how much he lost and is remorseful about his past actions. She believes because he knows how much he has to lose, he will continue to remain sober. She has noticed a significant change in him since he has acknowledged his problems and committed to sobriety. She and her husband are communicating better. She supports him when he wants to go to AA meetings and never questions him in that regard.<sup>14</sup>

Applicant's mother testified on his behalf. She never noticed Applicant had a problem with alcohol until after he was married and had a child. She attended the three-day program for family members with Applicant's wife at the treatment facility. She also attends Al-Anon. She believes Applicant has grown and is working at his AA program. She believes as long as he continues working his program he will do well.<sup>15</sup>

Applicant's father testified on his behalf. He believes his son is currently doing quite well. He has not observed his son consuming alcohol since he recommitted to sobriety. He stated that his son would contact either him or his wife if he felt he could not drive his daughter to daycare.<sup>16</sup>

Applicant's sister testified on his behalf. She never knew Applicant to have an issue with alcohol until about five or six years ago. He disclosed to her that he had an alcohol problem. She has seen a significant change in Applicant since he committed to sobriety. She has seen his new commitment to his wife and daughter. She remembers there were some dark days when he was going through rehabilitation. She observed that he was depressed and down on himself. She is optimistic about his future and sobriety.<sup>17</sup>

Applicant's AA sponsor testified on his behalf. He met Applicant in 2000 when they worked on a project together. He considered him very meticulous and structured. While attending an AA meeting in 2008, he saw Applicant, and they began to talk. He sees Applicant two to three times a week at AA meetings. They also talk on the phone and text each other regularly. He has been Applicant's sponsor for three years. He believes Applicant is a technical person, and that there is an attitude among technical-oriented people that "they are smarter than the average drunk."<sup>18</sup> He thinks it takes these people awhile to come to the point that they realize they are not that smart and have the same difficulties as others. Once they do, they grow and accept their

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<sup>14</sup> Tr. 94-125.

<sup>15</sup> Tr. 126-133.

<sup>16</sup> Tr. 133-142.

<sup>17</sup> Tr. 161-170.

<sup>18</sup> Tr. 149.-157.

alcoholism. It is normal for alcoholics to experience lapses. He believes Applicant is working hard at the AA program and has a good outlook. He believes Applicant has accepted that he does not need to drink, and he cannot consume any alcohol.<sup>19</sup>

Applicant's friend, who worked as a bartender at a place where he would go regularly, testified on his behalf. She has known him for almost 13 years. He told her that he was abstaining from alcohol. In the past, Applicant would go into the restaurant, have a couple drinks and leave. She has observed in the last three years that he would come in, have lunch, and catch-up with her and his friends, but he did not consume alcohol.<sup>20</sup>

Applicant's friend who is part of his AA recovery group testified on his behalf. He has known Applicant since October 2009. They see each other two or three times a week at AA meetings. He believes Applicant's recovery is going great. He has observed Applicant at AA meetings where Applicant will chair the meeting and Applicant's involvement in AA is very helpful to others.<sup>21</sup>

I have also considered the numerous character letters and letters of appreciation that were submitted.<sup>22</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.

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

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<sup>19</sup> Tr. 144.

<sup>20</sup> Tr. 170-179.

<sup>21</sup> Tr. 179-182.

<sup>22</sup> AE A-T.

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.

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 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 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 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.

I have considered all of the disqualifying conditions under AG ¶ 22 and the following are potentially applicable:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, 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;

(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;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant received treatment for alcohol consumption and was diagnosed with alcohol dependence after he received inpatient treatment at an alcohol rehabilitation facility several times from June 2007 to September 2009. Excessive alcohol consumption impaired his judgment. He failed to show up for work due to his alcohol abuse and was terminated. While on a business trip to a foreign country he consumed alcohol and failed to do his job. I find all of the above disqualifying conditions apply.

I have also considered all of the mitigating conditions under AG ¶ 23 and especially considered:

(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.

Applicant struggled for several years with accepting he is an alcoholic and cannot consume alcohol. He relapsed after treatment several times. He has finally accepted that he is an alcoholic and cannot drink alcohol. He is committed to being sober and



abstaining from alcohol consumption. He had a minor relapse in May 2011 that he immediately acknowledged to his AA sponsor. He has a strong family and friend support network that are also committed to his sobriety. He has an AA sponsor with whom he has been with for several years. Applicant is an active participant in the AA program. He attends meetings and also takes leadership roles. Although he has relapsed after participating in treatment programs, it now appears he is fully committed to his sobriety. He accepted his mistakes and missteps during his treatment process. He did not make excuses. I found Applicant credible in his earnest attempt to remain sober. It has been 19 months since his last consumption of alcohol. There are no absolute assurances that Applicant will not relapse. However, I believe he is now firmly committed to remaining sober, and his family and AA are providing the essential support he needs. I find enough time has passed to show Applicant is unlikely to relapse. I find AG ¶ 23(a) applies. Applicant has taken positive steps to address his alcoholism. I find AG ¶¶ 23(b) applies. AG ¶ 23(d) is only partially applicable because of the lack of a positive medical prognosis.

### **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 have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 45-year-old man. He struggled with alcohol dependence for about five years. It affected his work and his family. He attended both outpatient and inpatient treatment and had relapses. He finally accepted his alcoholism and has been participating in AA. He has a strong family and friend support network, along with his AA sponsor. I found Applicant was candid and credible. He was honest in accepting

responsibility for his alcoholism. He last consumed alcohol in May 2011, when he took a drink with his neighbors. He reported his misstep to his AA sponsor and recommitted to the program. I believe he is firmly committed to his sobriety. Applicant has met his burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the Alcohol Consumption guideline.

### **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 F: FOR APPLICANT

Subparagraphs 1.a-1.f: 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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge