



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-00449
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid S. Williams, Esquire, Department Counsel  
 Richard A. Stevens, Esquire, Department Counsel  
 For Applicant: *Pro se*

July 28, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant's clearance is granted.

On 28 March 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant listing security concerns under Guideline G, Alcohol Consumption.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 20 May 2011, and I convened a hearing 30 June 2011. DOHA received the transcript (Tr.) 9 July 2011.

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<sup>1</sup>Consisting of the transcript (Tr.) and Government exhibits (GE) 1-4.

<sup>2</sup>DOHA acted 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) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the Guideline G allegations, except for SOR 1.a, claiming that he last abused alcohol in December 2008 and not March 2010 as alleged. He is a 33-year-old employee of a defense contractor.<sup>3</sup> He seeks to retain the clearance he has held since October 1994. He also requires his clearance for his military reserve service. Applicant served 13 years active duty, including deployment to Korea and Iraq, during which he reached paygrade E-6. In 2½ years in the reserves, he has been promoted to paygrade E-7.

Applicant has an 11-year history of excessive alcohol consumption, punctuated by four alcohol-related incidents: a December 1999 non-judicial punishment (NJP) for DUI, a January 2002 pedestrian-automobile accident where Applicant fell into the street while drunk and was hit by a car, a December 2006 DWI conviction, and a December 2008 DUI conviction which resulted from Applicant falling asleep behind the wheel and wrecking his car. Applicant was also charged with DUI in October 2002, but was found not guilty at trial (GE 4).

Applicant began drinking in 1997 while he was stationed in Korea. After his December 1999 NJP, the military reviewed his security clearance, which he retained (GE 3). After his October 2002 DUI arrest, the military ordered him to attend an alcohol safety action program (ASAP), but his work assignments and a second deployment to Korea kept him from attending more than the first two sessions. Similarly, the pertinent portion of his December 2006 sentence was suspended because he was deploying to Iraq.

After his December 2008 DUI, Applicant completed the state ASAP. He also attended an addiction counseling program weekly for about seven months between July 2009 and December 2010. During this program, he attended 20 alcoholics anonymous meetings. He was not diagnosed as alcohol dependent.

Applicant saw his December 2008 accident as a wake-up call for his alcohol consumption. He describes his current alcohol consumption as one drink per sitting, whether out with friends or at home. This translates into 4-5 drinks per month. His girlfriend of three years does not drink; so she drives when they go out, and she also provides an incentive to limit his alcohol consumption.

## Policies

The AG list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must

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<sup>3</sup>The record does not reveal how long he has been employed by the contractor, or in what capacity. The only clearance application in the record (GE 1) is a September 2004 periodic reinvestigation while Applicant was still on active duty in the military.

also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. Still, specific adjudicative guidelines should be followed when a case can be measured by them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline G (Alcohol Consumption).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>4</sup>

### **Analysis**

The government established a case for disqualification under Guideline G, by demonstrating Applicant's 11-year history of alcohol abuse, punctuated by alcohol-related arrests in December 1999, October 2002, December 2006, and December 2008, as well as an alcohol-related injury in January 2002.<sup>5</sup> However, Applicant mitigated the security concerns.

Neither the retention of his clearance after the 1999 NJP nor the favorable adjudication of his clearance after his September 2004 periodic reinvestigation (which looked at both the December 1999 and the December 2002 incidents) precludes reexamination of those incidents in the current adjudication. Nevertheless, Applicant acknowledged his past problems with alcohol, and took steps to reduce his consumption.<sup>6</sup> Limiting the number of drinks, the number of occasions on which he

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>¶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; . . . (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;

<sup>6</sup>¶23.(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);

drinks, and having his non-drinking girlfriend drive whenever they go out with friends demonstrates a pattern of responsible use. I conclude Applicant is unlikely to abuse alcohol in the future. Accordingly, I resolve Guideline G for Applicant.

**Formal Findings**

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraphs a-f: For Applicant

**Conclusion**

Viewing the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge