



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



In the matter of: )  
)  
) ISCR Case No. 11-00759  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

03/20/2014

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Although Applicant has mitigated the security concerns raised by his history of financial problems, he failed to mitigate the concerns raised by his history of excessive alcohol consumption. Clearance is denied.

**Statement of the Case**

On September 19, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and alcohol consumption guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> At the hearing convened on December 12, 2013, I admitted Government's Exhibits (GE) 1 through 7 and Applicant's Exhibits (AE) A through C, without objection. After the hearing, Applicant timely submitted AE D through I, which were also admitted without objection.<sup>3</sup> I received the transcript (Tr.) on January 2, 2014.

### **Procedural Issues**

Applicant received less than 15 days written notice of the time and place of the hearing as required under Directive ¶ E.3.1.8. Applicant waived the notice requirement, electing to proceed with the hearing as scheduled.<sup>4</sup>

### **Findings of Fact**

Applicant, 25, works as a heating ventilation and air conditioning apprentice for a federal contractor. He has worked for his employer since May 2010. According to his most recent performance review, Applicant is performing well in his current position.<sup>5</sup>

Applicant has lived on his own since he turned 18 years old. In the four years before he started his current job, Applicant was either underemployed or unemployed. As a result of his sporadic employment history, Applicant incurred some delinquent debt. Because he did not have health insurance, Applicant accumulated approximately \$7,500 in delinquent medical debt. In addition, Applicant incurred two delinquent consumer accounts, totaling approximately \$2,000. He also failed to file his federal income taxes in 2007. In August 2013, he enrolled in a debt-repayment program and has been making monthly payments toward the resolution of his delinquent debts. He has tried to file his 2007 tax return, but has been unable to obtain his W-2s for that year. Since 2007, Applicant has filed his federal income tax return every year. Applicant lives within his means and has not incurred any new consumer debt.<sup>6</sup>

In addition to the financial problems Applicant experienced as he started living on his own, he also developed alcohol issues. Applicant admits that he began consuming alcohol when he was 12 years old and that through at least 2012, he often drank to the point of intoxication and impaired judgment. Oftentimes, he would black out. Although

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<sup>2</sup> The letter from the Chief Administrative Judge regarding the Applicant's rights and obligations in a DOHA proceeding is appended to the record as Appellate Exhibit (AP E) I.

<sup>3</sup> Department Counsel's memorandum regarding the admissibility of the Applicant's post-hearing submissions is included in the record as Hearing Exhibit (HE) 1.

<sup>4</sup> Tr. 5-6.

<sup>5</sup> Tr. 15-17; GE 1; AE D-F.

<sup>6</sup> Tr. 17-30; GE 1-2, 6-8; AE I.

Applicant believes that his alcohol consumption did not have a negative effect on his professional life, he does believe that his drinking did have repercussions in his personal life. He often argued with friends and family members while intoxicated. At times he would become violent. Between 2008 and 2013, Applicant experienced a series of negative alcohol-related events after binge drinking.<sup>7</sup>

In 2008, Applicant was evicted from his apartment after three months for noise complaints and underage drinking in the apartment. Every weekend, Applicant, then 19-years-old, and his friends, who were also underage, would hang out at Applicant's apartment and drink. In February 2011, Applicant was arrested and convicted of malicious destruction of property. During an alcohol-induced blackout, Applicant returned from a night out with his friends and tried to enter the wrong apartment, kicking holes in the front and back doors in an attempt to gain access. Applicant pleaded guilty to the charge and was required to attend 30 Alcoholics Anonymous (AA) meetings, perform 25 hours of community service, and to pay restitution for the damage he caused. Applicant has fulfilled all the requirements of his sentence. Applicant had another alcohol-related event in April 2013 when he drank to the point of blackout at a family friend's wedding, which happened to coincide with his birthday. Applicant admitted that his behavior at the wedding embarrassed his family so much that his brother and cousin had serious talks with him about his drinking habits, suggesting that he significantly decrease his alcohol consumption. Applicant credits these talks with changing his attitude toward drinking. However, Applicant did not see the need to attend any AA meetings or seek counseling after this incident.<sup>8</sup>

Applicant concedes that he was addicted to alcohol around the time of his February 2011 arrest. Between April 2010 and February 2011, he was drinking heavily every day. Applicant remained sober for the three months he attended the court-mandated AA meetings, which remains his longest period of sobriety to date. Even after completing the AA requirement of his sentence, Applicant continued to attend meetings occasionally through the end of 2012 because he felt he needed reminders about the negative impact alcohol was having on his life. By the end of 2012, Applicant felt that he no longer needed AA. As of June 2013, Applicant believed that he was no longer dependent on alcohol and that he could consume alcohol responsibly. Applicant continues to drink socially, either once a week or every other weekend, with the same group of friends as when his drinking was at its heaviest. The last time Applicant was intoxicated was August 2013. He consumed alcohol days before the hearing at an office holiday party. Applicant intends to continue consuming alcohol in the future.<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

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<sup>7</sup> GE 2.

<sup>8</sup> Tr. 32-34, 36, 43-44, 49-50; GE 2, 4-5; AE A-C, G-H.

<sup>9</sup> Tr. 31-35, 38-40, 42-44, 48.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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 EO 10865 provides that adverse 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 F, Financial Considerations**

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

questions about an individual's reliability, trustworthiness and ability to protect classified information."<sup>10</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant owes approximately \$9,500 in delinquent debts. The debts are substantiated by Applicant's credit reports.<sup>11</sup> The record supports a finding that Applicant had a history of financial problems that resulted in unresolved delinquent debts.<sup>12</sup> He also demonstrated an inability to pay his debts.<sup>13</sup> However, Applicant has submitted sufficient information to mitigate the security concerns raised by his finances. Applicant has demonstrated a good-faith effort to resolve his delinquent debts by participating in a debt-repayment program.<sup>14</sup> The Appeal Board has held that, "an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.<sup>15</sup> Applicant has done so and has demonstrated that his finances are under control.

The SOR alleges and Applicant admits that he failed to file his 2007 federal income tax return.<sup>16</sup> This isolated incident occurred when Applicant was 18 years old and is not indicative of current financial irresponsibility or an inability to follow rules and regulations.<sup>17</sup>

### **Alcohol Consumption**

Excessive alcohol consumption is a security concern because it "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."<sup>18</sup> Although Applicant has not been diagnosed as being an alcohol abuser or being alcohol dependent, he has a

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<sup>10</sup> AG ¶ 18.

<sup>11</sup> GE 6-8.

<sup>12</sup> AG ¶ 19(a).

<sup>13</sup> AG ¶ 19(c).

<sup>14</sup> AG ¶ 20(d).

<sup>15</sup> See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).

<sup>16</sup> AG ¶ 19(g).

<sup>17</sup> AG ¶ 20(a).

<sup>18</sup> AG ¶ 21.

history of engaging in binge consumption of alcohol to the point of impaired judgment.<sup>19</sup> None of the alcohol consumption mitigating conditions apply. Each of Applicant's alcohol-related events started with drinking in social settings. Because he continues to drink socially with the same group of friends, I am unable to find that Applicant will not consume alcohol to the point of blackout or impaired judgment in the future. Also, Applicant's attitude about his continued use of alcohol prevents mitigation of these issues.

Applicant does not believe that he has a current problem with alcohol. His assessment that he was able to overcome his self-diagnosed addiction to alcohol in a year and a half, not only contradicts the record, but shows the extent of Applicant's immaturity and his lack of understanding about alcohol addiction. Applicant has only been able to maintain three months of sobriety since February 2011. Applicant has not made any changes in his life to support abstinence or sobriety let alone responsible alcohol consumption habits. He has not received any alcohol counseling nor does he recognize the need for any such help.

### **Whole-Person Concept**

After reviewing the record, I have doubts about Applicant's current suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Security clearance determinations are not limited to Applicant's conduct during duty hours; off-duty conduct can be considered in evaluating an applicant's security worthiness.<sup>20</sup> Applicant's off-duty conduct shows a pattern of poor judgment. At hearing, Applicant failed to acknowledge the severity of his alcohol issues and demonstrated an immaturity that detracts from his current security worthiness. While Applicant mitigated the financial considerations concerns, he failed to mitigate those regarding his history of binge drinking to the point of impaired judgment.

The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, in the future, Applicant may well demonstrate more maturity and self-awareness about his alcohol-related issues. He may also be able to present evidence of changes in his life to support responsible alcohol consumption or sobriety. At his time, however, Applicant's request for access to classified information is denied.

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<sup>19</sup> AG ¶ 22(c).

<sup>20</sup> ISCR Case No. 98-0620 (App. Bd. Jun. 22, 1999).

### **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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.l:	For Applicant
Paragraph 2, Alcohol Consumption:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge