



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



In the matter of: )  
)  
) ISCR Case No. 11-01774  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

03/08/2012

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant rebutted personal conduct security concerns, but he has not mitigated alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 13, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and E (personal conduct). The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 2, 2011, and requested a hearing before an administrative judge. The case was assigned to me on December 12, 2011. DOHA issued a notice of hearing on January 3, 2012, scheduling the hearing for January 12,

2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open until February 27, 2012, for Applicant to submit additional information. No additional information was submitted. DOHA received the hearing transcript (Tr.) on January 22, 2012.

### **Findings of Fact**

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since March 2000. He is applying for a security clearance for the first time. He served in the military from 1977 until he was discharged with a general discharge in 1981. He attended college for a period, but he has not earned a degree. He is married for the fourth time. He has an adult child and two minor stepchildren.<sup>1</sup>

Applicant was arrested and charged with driving under the influence (DUI) in 1981, 1991, and 1998. He pleaded no contest to the 1991 and 1998 charges and received deferred adjudications. After the 1998 charge, he was required to attend alcohol counseling. As part of the counseling, Applicant was diagnosed as alcohol dependent. The details of the diagnosis are unclear, as the information that he was diagnosed as alcohol dependent came from Applicant's memory.<sup>2</sup>

In December 2008, Applicant was charged with appearing in an intoxicated condition. Applicant stated that he was drinking in a bar and took a taxi to another bar. When he arrived at the second bar, he realized that he left his wallet in the first bar, and he did not have money to pay the taxi fare. The taxi driver was upset and called the police. Applicant was living in another state at the time of the arrest, but he moved before the court date. He did not receive the court summons notifying him of the court date. In April 2010, Applicant was drinking in a bar with some friends. One of his friends was involved in a ruckus, causing the police to arrive. The police checked the identifications of people in the area of the disturbance, including Applicant. The police discovered a bench warrant for Applicant's failure to appear on the intoxicated condition charge and arrested him for that charge. The charge was eventually dismissed.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2010. Under Section 22: Police Record, the instructions stated: "For questions a and b, respond for the timeframe of the last 7 years (if an SSBI go back 10 years)." Section 22e asked "Have you EVER been charged with any offense(s) related to alcohol or drugs?" Applicant answered "Yes" and listed his December 2008 arrest, which he classified as "drunk in public." He did not list his April 2010 arrest, because that was not a separate charge. He did not list the three DUIs because he misread the

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<sup>1</sup> Tr. at 18, 19, 23-24, 36, 41; GE 1.

<sup>2</sup> Tr. at 32, 37; Applicant's response to SOR; GE 2, 4.

<sup>3</sup> Tr. at 27-30; Applicant's response to SOR; GE 2, 3.

question to limiting the scope of the question to seven years.<sup>4</sup> After considering all the evidence, I find that Applicant did not intentionally falsify his SF 86.

Applicant admitted that he has had some alcohol-related work problems, including arriving late and feeling hung-over. He stated that he has not driven after drinking since his 1998 arrest. He does not believe that he is an alcoholic. He does not drink during the week, but he would have a few drinks over the weekend. When he does drink, it is responsibly and in moderation. Over the course of an evening, he would have three to six drinks. He rarely goes to bars anymore. His New Year's resolution was to stop drinking completely. He stated that he had not had a drink since New Year's Eve 2011.<sup>5</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 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

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<sup>4</sup> Tr. at 19, 34-35; Applicant's response to SOR; GE 1.

<sup>5</sup> Tr. at 20, 24-31, 34, 37-38; Applicant's response to SOR; GE 2.

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 G, Alcohol Consumption**

The security concern for alcohol consumption is set out in AG ¶ 21:

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.

The guideline notes conditions that could raise security concerns under AG ¶ 22. The following 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;
- (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; and
- (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.

Applicant has multiple alcohol-related arrests. He admitted that he has had some alcohol-related work problems, including arriving late and feeling hung-over. AG ¶¶ 22(a), 22(b), and 22(c) are applicable.

After the 1998 DUI charge, Applicant was required to attend alcohol counseling. As part of the counseling, Applicant was diagnosed as alcohol dependent. The details of who made the diagnosis are unavailable. Applicant was given the opportunity after the hearing to seek another diagnosis. Nothing was submitted. Applicant's diagnosis of alcohol dependence does not fit the exact definition of AG ¶ 22(d). However, the Appeal Board has stated that an administrative judge should take an expansive view of what constitutes a licensed clinical social worker who is a staff member of a recognized drug treatment program, and that "¶ 22 is not an exhaustive and exclusive list of disqualifying conditions; rather the word 'include' in the preamble signals that the matters listed are illustrative in nature and do not provide a Judge with a basis to conclude that factors or categories not explicitly described do not raise security concerns." ISCR Case No. 07-00558 at 5 (App. Bd. Apr. 7, 2008). I find that Applicant's unrebutted diagnosis of alcohol dependence raises a security concern, even without the exact qualifications of the person making the diagnosis.

Applicant's April 2010 arrest was because of a bench warrant for his December 2008 charge. SOR ¶ 1.f, which alleges the April 2010 arrest, is concluded for Applicant.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (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; and
- (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).

Applicant did not submit any evidence to dispute his diagnosis as alcohol dependent. It has been more than 13 years since his last DUI, and more than 3 years since his actions that led to the appearing in an intoxicated condition charge. Applicant testified that in the last several years, when he did drink, it was responsibly and in moderation. He also stated that his New Year's resolution was to stop drinking completely, and that he had not had a drink since New Year's Eve 2011. The hearing was held on January 12, 2012. At that time, he had been abstinent for about 12 days. The record was held open until February 27, 2012. Applicant did not provide any additional information, so I do not know if he has maintained his abstinence. Without additional information, I am unable to find a sufficient period of abstinence for AG ¶ 23(b) to be applicable. I find that Applicant's alcohol issues are recent, did not happen under unusual circumstances, and I am unable to determine that they are unlikely to recur. Applicant's alcohol consumption continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 23(a) is not applicable.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

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. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant provided inaccurate information on his SF 86, but it was not intentional. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

### **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 relevant 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 Guidelines G and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's military service and his stable work history. However, Applicant has not submitted sufficient information to mitigate the concerns raised by his history of alcohol abuse and alcohol-related incidents.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant rebutted personal conduct security concerns, but he has not mitigated alcohol consumption security concerns.

### **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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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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Edward W. Loughran  
Administrative Judge