



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



In the matter of: )  
)  
) ISCR Case No. 11-02438  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2016

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 16, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 September 1, 2006.

Applicant answered the SOR on July 14, 2015, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 9, 2015. The evidence

included in the FORM is identified as Items 4-10 and is admitted into the record (Items 1-3 are pleadings and transmittal documents). The FORM was mailed to Applicant, who received it on October 19, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted an undated response to the FORM, which was admitted without objection as Applicant Exhibit (AE) A. The case was assigned to me on December 21, 2015.

### Findings of Fact

In Applicant's answer to the SOR, he admitted all but one of the allegations. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.<sup>1</sup>

Applicant is 56 years old. He has worked for a defense contractor since 1997. He is divorced and has three children, ages 15, 18, and 20. He has a bachelor's degree. He has no military experience.<sup>2</sup>

Applicant's conduct raised in the SOR included: a history of consuming alcohol, at times, to excess from 1974 to about April 2014; being found guilty for operating under the influence of alcohol (OUI) in February 1991; being found guilty for OUI 2<sup>nd</sup> in November 1997; and being found guilty for OUI 3<sup>rd</sup> in November 2010 (See SOR ¶¶ 1.a - 1.d).<sup>3</sup>

Applicant began drinking alcohol when he was approximately 15 years old in 1974. He drinks beer on most occasions. Even after his OUI convictions, he stated he was still was consuming two to three beers a week. He drinks in social settings and after hockey games. As a result of his 2010 OUI conviction, he lost his driver's license for five years. He completed his probation in May 2015.<sup>4</sup>

Court documents establish that Applicant was found guilty of three OUI offenses, in 1992 (1991 arrest), 2000 (1997 arrest), and 2012 (2010 arrest). He was placed on probation in each instance.<sup>5</sup>

In February 1991, Applicant was driving home from a friend's house where he consumed about four beers. He was stopped by a police officer who had observed Applicant's car cross over the center line. Applicant was given, and failed, a field sobriety test. He was taken into the police station where he refused a breathalyzer test.

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<sup>1</sup> Item 2.

<sup>2</sup> Item 4.

<sup>3</sup> Items 1, 3.

<sup>4</sup> Item 10; AE A.

<sup>5</sup> Item 7, 9; AE A.

He was charged with OUI and later pleaded guilty. He was required to attend 12 weeks of alcohol education and counseling classes, which he completed.<sup>6</sup>

In November 1997, Applicant was going home from a high school football game when he was stopped in traffic by a police officer. Applicant had two beers before the game and shared a flask containing some kind of alcohol at the game. The officer apparently asked Applicant if he had been drinking and Applicant answered affirmatively. He was then given field sobriety tests, which he failed. He was arrested, taken back to the police station and given a breathalyzer test, which he also failed. He was found guilty of OUI and sentenced to two years' probation, loss of his driver's license for six months, and 12 weeks required attendance at alcohol education and counseling classes.<sup>7</sup>

In November 2010, Applicant was driving back from a hockey tournament and was stopped by a state patrolman because he crossed the center line. Applicant had consumed six beers and shared a flask of whiskey at the hockey tournament. He failed the field sobriety tests and was almost incoherent to the patrolman. He was arrested and taken to a police station where he was offered a breathalyzer test. He was unable to properly perform the test, which was deemed a refusal to take the test. He was found guilty of OUI and sentenced to six months' incarceration, five years of probation, loss of driver's license for five years, and mandatory substance abuse evaluation and treatment.<sup>8</sup>

The court-ordered substance abuse treatment involved two mandatory sessions and Applicant voluntarily attended six more sessions. He failed to provide documentation of any evaluation done by the counselors, but Applicant stated he was diagnosed as being an alcohol abuser. Applicant also attended Alcohol Anonymous (AA) meetings once every six to eight weeks. He last attended an AA meeting in May 2015. He continued to drink an occasional beer every few months. In May 2015, at an AA meeting he heard a story had made him decide to stop drinking alcohol entirely. He claims he has not had any alcohol since that time.<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 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.

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<sup>6</sup> Item 10.

<sup>7</sup> Item 10.

<sup>8</sup> Items 7, 10.

<sup>9</sup> Item 6-10; AE A.

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 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, 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. 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;
- (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.

Applicant's three OUI convictions and his drinking history support the application of both disqualifying conditions.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

- (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's last adverse alcohol incident occurred in November 2010 and he came off probation for that offense in May 2015. His three OUI convictions are not infrequent under these circumstances. Insufficient attenuation exists to conclude enough time has passed since his last alcohol-related incident. His history of OUI arrests and convictions under similar circumstances suggest that recurrence is a possibility. His current reliability, trustworthiness, and good judgment are in doubt. AG ¶ 23(a) does not apply.

Applicant recently decided to totally abstain from using alcohol. He indicated that he has abstained since May 2015. While this is a commendable start, it is too soon to determine whether his abstinence will continue to be part of his life or whether he will use alcohol responsibly in the future. AG ¶ 23(b) partially applies.

### **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 guideline 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 considered the circumstances that led to his arrests and his current state of abstinence. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline G.

### **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.d:	Against 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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Robert E. Coacher  
Administrative Judge