



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 11-04287
	)	
Applicant for Security Clearance	)	

**Appearances**

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

06/27/2012

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Alcohol Consumption concern. He has a long history of excessive alcohol consumption, which has resulted in several alcohol-related incidents. Although Applicant’s last alcohol-related incident was five years ago, he continues to drink excessively despite a current diagnosis of alcohol abuse. Applicant’s inability to curb his excessive alcohol use raises concerns about his suitability for access to classified information. Clearance is denied.

**Statement of the Case**

On March 5, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline G (Alcohol Consumption).<sup>1</sup> Applicant submitted his Answer on March 21, 2012, and requested a hearing.

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<sup>1</sup> DOHA took this action 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 implemented by the Department of Defense on September 1, 2006.

On April 10, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on April 19, 2012 and, after coordinating with the parties, scheduled the hearing for May 23, 2012. At hearing, Department Counsel offered Government Exhibits (GE) 1 – 5, which were admitted without objection.<sup>2</sup> Applicant appeared at the hearing with counsel, testified, and called several witnesses. He also offered several documents that were admitted as Applicant's Exhibits (AE) A – K.<sup>3</sup> The transcript (Tr.) was received on June 5, 2012.

### Findings of Fact

Applicant is in his late thirties. He grew up in a broken home, and admits that he was a "little rebellious" and "got into a little trouble" during his high school years. Shortly after graduating from high school in 1992, Applicant enlisted in the U.S. Navy. He was on continuous active duty until his discharge in June 2007. He was first granted access to classified information in about 1997 and maintained a clearance without incident until his discharge from the Navy. He married in 1994 and has one child from that marriage. He divorced in 2004 and married his current wife in 2007.<sup>4</sup>

Applicant started drinking alcohol in his early teens. He had several alcohol-related incidents before joining the Navy, to include: shoplifting beer from a convenience store, damaging school property, driving while impaired (.12 BAC), and possession of alcohol by a minor. He was sentenced to a 14-week "adolescent chemical user group" for the shoplifting offense. These four alcohol-related criminal incidents occurred between 1990 and 1991.<sup>5</sup> (SOR ¶¶ 1.b – 1.e)

Applicant's work performance, throughout his 15-year naval career, was exemplary. He deployed on multiple occasions in support of U.S. operations abroad. He garnered numerous awards and decorations for his performance. During the later stages of his naval career, Applicant voluntarily trained as an explosive ordnance demolition (EOD) technician.<sup>6</sup> He quickly became a team leader and was viewed by his command as a "vital asset."<sup>7</sup> He was able to stay clear of any trouble involving alcohol during the early years of his naval career, except for a verbal reprimand for drinking while aboard ship in 1996.<sup>8</sup> (SOR ¶ 1.f)

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<sup>2</sup> The Government offered GE 6 in rebuttal. Applicant objected to its admission on relevance and timeliness ground. Applicant's objection was sustained and the exhibit was not admitted.

<sup>3</sup> Per the prehearing order, Applicant submitted an exhibit list that is included with the case file.

<sup>4</sup> Tr. at 56-58, 71; GE 1 – 2; AE A – C.

<sup>5</sup> GE 2; GE 5; Answer; AE B. See *also* GE 4.

<sup>6</sup> Tr. at 58-61; AE B – D, AE F – H, AE J.

<sup>7</sup> AE F at 2.

<sup>8</sup> Tr. at 59-60, 78; Answer; AE B.

Applicant's first serious, alcohol-related incident in the Navy was in 2004, when he was arrested for driving under the influence (DUI). He had recently returned from a tour in Iraq and was at a going-away party for a fellow sailor. He drank about six beers and four to six shots of liquor before getting behind the wheel. He was arrested and subsequently convicted of DUI. He attended outpatient alcohol treatment through the Navy and was diagnosed as alcohol dependent.<sup>9</sup> (SOR ¶¶ 1.g and 1.h)

Following this diagnosis, Applicant continued to drink. In 2006, while overseas, he got into an altercation with a fellow sailor. He had consumed about three to four beers and a pint of liquor prior to the altercation. He received non-judicial punishment at Captain's Mast and was ordered to attend inpatient alcohol treatment.<sup>10</sup> On May 1, 2007, Applicant successfully completed the requirements of the inpatient program and its aftercare requirements. He received a favorable prognosis and was advised not to drink alcohol in the future. He was warned by his command that any further alcohol-related misconduct would result in his discharge from the Navy.<sup>11</sup> (SOR ¶¶ 1.i and 1.j)

Shortly after completing the treatment program, Applicant started drinking again. He consumed alcohol at an overseas location where U.S. military personnel are strictly prohibited from consuming alcohol. On May 8, 2007, Applicant received non-judicial punishment for this alcohol-related incident. The following month, he was administratively discharged from the Navy with an under honorable conditions (general) discharge for a pattern of alcohol-related misconduct.<sup>12</sup> (SOR ¶¶ 1.k and 1.l)

Six months later, in November 2007, Applicant was able to secure a job as a diver for his current employer. A supervisor, who has known Applicant since 1996, testified that Applicant is an honest, humble individual, who is trustworthy and reliable. Applicant has an excellent reputation at work and performs his work flawlessly. The witness has seen Applicant drink alcohol in social settings and is not concerned that he has a drinking problem. If the witness did have such concerns, he would not place Applicant or other employees' lives at risk by continuing to let him dive.<sup>13</sup>

Applicant's current wife also testified. She is a U.S. military officer with 22 years of service. She holds a bachelor's degree in psychology and counseling, and previously served as an advisor in the military's drug and alcohol treatment program. She has held a security clearance since 1994 and currently holds a top secret clearance with access to sensitive compartmented information (TS/SCI). She testified in general about their life together and specifically how they spend most of their free time tending to their

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<sup>9</sup> Tr. at 60-63; GE 1 – 2; GE 4, Subject Interview (SI) at 3; Answer; AE B.

<sup>10</sup> Tr. at 63-68; GE 1 – 2; GE 4, SI at 1-2; Answer; AE B.

<sup>11</sup> Tr. at 79-83; AE E.

<sup>12</sup> Tr. at 68-71, 79-83; GE 1 – 2; GE 4, SI at 2-3; Answer; AE B – C.

<sup>13</sup> Tr. at 18-34, 71. See also AE A.

obligations, including their home, rental property, and side private business. She noted that her disabled mother lives with them and Applicant helps take care of her. She describes Applicant as a trustworthy individual, who is a dedicated father.<sup>14</sup> She acknowledges that Applicant drinks alcohol on the weekends and that she has witnessed him drink to the point he was “drunk . . . maybe two to three times in the last six months.” She explained that to her “drunk” means that Applicant “has had more than four or six beers, four or six drinks.”<sup>15</sup>

Applicant submitted his current security clearance application in July 2010. He disclosed the alcohol-related incidents that led to his discharge from the Navy.<sup>16</sup> During the ensuing background investigation, Applicant fully discussed his history of alcohol abuse and current level of alcohol use. In August 2010, he told a federal investigator that he drank “four to six beers and two to three shots twice a week on Friday and Saturday.” He also told the investigator that about once a month when he goes out on his “boat he will have 10 beers and five shots.” He went on to define intoxication as “when you begin to feel a slight dizziness which is between .10 and falling down,” and stated that “will drink to intoxication every other time he drinks.”<sup>17</sup> Over a year later, in December 2011, Applicant responded to a DOHA interrogatory and confirmed that he continued to drink “4 to 6 beers, and 2 to 4 shots – one to two times weekly.” He also stated that he drinks to the point of intoxication “2 – 4 times a month,” and that he last drank to the point of intoxication a few days before submitting his response.<sup>18</sup>

At DOHA’s request, Applicant was recently evaluated by a licensed clinical social worker. He was diagnosed with alcohol abuse. During the evaluation, Applicant told the social worker that he continues to drink on the weekends and that he “drinks 4-6 beers and 2-4 shots of liquor, over a long night of drinking.” He reported that “his last use of alcohol was ‘two nights ago’ when he ingested 4-6 beers and 2-4 shots.”<sup>19</sup> (SOR ¶ 1.m)

In his Answer and at hearing, Applicant attempted to backtrack from his earlier statements about the amount of alcohol he currently consumes. He claims to drink responsibly now, does not drink to the point where he loses control, and stays away from all situations that use to lead to trouble in the past. He pointed to a number of positive changes in his life, including his marriage and work performance, which he claims demonstrate that he no longer has a problem with alcohol.<sup>20</sup>

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<sup>14</sup> Tr. at 35-54; AE K.

<sup>15</sup> Tr. at 45. *See also* Tr. at 47-48.

<sup>16</sup> GE 1 at 18-22, 39-44.

<sup>17</sup> GE 4, SI at 6.

<sup>18</sup> GE 3.

<sup>19</sup> GE 4, Alcohol Evaluation Report, *Social History*.

<sup>20</sup> Answer; Tr. at 72-77.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15.<sup>21</sup> An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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.

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<sup>21</sup> ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

## Analysis

### Guideline G, Alcohol Consumption

The concern regarding excessive alcohol consumption is articulated at 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.

Applicant's long history of alcohol-related incidents that culminated in his involuntary separation from the Navy, his past diagnoses of alcohol dependence, and his current diagnosis of alcohol abuse, directly implicate this concern. The evidence also establishes the following disqualifying conditions under AG ¶ 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;
- (b) alcohol-related incidents at work, such as . . . 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
- (d) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program.<sup>22</sup>

An applicant may mitigate the excessive alcohol consumption concern by establishing one or more of the following mitigating conditions under AG ¶ 23:

- (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

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<sup>22</sup> ISCR Case No. 07-00558 (App. Bd. Apr. 7, 2008) (Application of AG ¶¶ 22(d) and (e) not limited to enumerated professionals).

has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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.

None of the mitigating conditions apply. Although Applicant's last alcohol-related incident was five years ago, he failed to establish that such behavior will not recur. He has a long history of alcohol abuse and continues to drink alcohol to excess. Applicant's current level of consumption, i.e., four to six beers and two to four shots of liquor, is about the same amount of alcohol he consumed prior to his 2004 DUI. His consumption of alcohol is even greater and far more irresponsible when he goes boating. He continues to consume alcohol to the point where he gets drunk.<sup>23</sup> Even after the DUI and the adverse consequences that cut short his 15-year naval career, Applicant has not moderated his alcohol use. He is not currently participating in a treatment program or Alcoholics Anonymous. The mitigating value of Applicant's successful completion of the Navy's inpatient treatment program and the favorable prognosis he received from the program is severely undercut by the fact that shortly thereafter he was involved in another alcohol-related incident that led to his involuntary separation from the Navy. Further, this final incident came after he was advised not to drink again and told by his command that a further alcohol-related incident would result in his discharge. Additionally, knowing that the Government had current concerns about his alcohol use, Applicant decided to drink to excess just a few days before his scheduled alcohol evaluation. This leaves me to conclude that Applicant will not or cannot stop or moderate his use of alcohol, even when his career or clearance is at stake. Under the circumstances, time alone is insufficient to mitigate the security concern at issue. AG ¶¶ 23(a) – 23(d) do not apply.

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<sup>23</sup> In resolving the conflicting evidence regarding the extent of Applicant's alcohol use, I gave more weight to the prior consistent statements Applicant made to the investigator, in his DOHA interrogatory response, and during his recent alcohol evaluation; and gave less weight to his more recent statements in his Answer and at hearing – statements that were made after the potential negative security ramifications were clearly evident. Further, Applicant's prior inculpatory statements are consistent with the other evidence, including his wife's hearing testimony.

## Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>24</sup> I gave due consideration to Applicant's long and distinguished military service, his history of properly handling classified information, his current work performance, and his candor during the background investigation. However, this favorable information is insufficient to overcome the doubts raised by Applicant's past alcohol problems and questionable decision to continue to consume alcohol to excess.<sup>25</sup> Hopefully, Applicant will finally come to terms with his alcohol issues and be able to re-establish his security worthiness in the future.

### Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline G (Alcohol Consumption)                      AGAINST APPLICANT

Subparagraphs 1.a through 1.n:    Against Applicant

### Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>24</sup> The adjudicative factors are: (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.

<sup>25</sup> ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) ("[e]ven years of safeguarding national security information may not be sufficient to mitigate" security concern raised by an applicant's conduct); ISCR Case No. 10-02803 at 6 (App. Bd. Mar. 19, 2012) ("Applicant's documented service to the country was record evidence which the Judge had to consider," but on its own may not be sufficient to overcome concerns raised about an applicant's judgment and reliability).