



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-04508
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

07/31/2012

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant engaged in a series of alcohol-related disciplinary and criminal violations from 1994 to 2005. He underwent two 30-day inpatient treatment programs, but ignored after-care recommendations and resumed drinking after each. He was also arrested for disorderly conduct and assault after incidents in 2009 and 2010. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on January 25, 2010. On February 23, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines E (Personal Conduct), and G (Alcohol Consumption). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on March 5, 2012, and requested that a decision be reached on the written record without a hearing. On March 7, 2012, Applicant wrote to the DOHA personnel security specialist who issued his SOR to retract his waiver of a hearing and request a hearing before an administrative judge. Department Counsel was prepared to proceed on March 29, 2012. The case was assigned to me on April 4, 2012. DOHA issued a Notice of Video Teleconference Hearing on April 12, 2012, and I convened the hearing, as scheduled, on April 30, 2012. The Government offered exhibits (GE) 1 through 16, which were admitted without objection, and Hearing Exhibit (HE) I, a demonstrative exhibit to help identify relevant portions of the Government exhibits with pertinent SOR allegations. Applicant offered exhibits (AE) A through H, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until May 14, 2012, to permit submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on May 10, 2012. On May 17, 2012, Applicant responded to Department Counsel's inquiry with a statement that he did not have any further evidence to present and requested that the record be closed.

### **Findings of Fact**

Applicant is a 36-year-old prospective employee of a defense contractor. He has never married, and has a 16-year-old son for whom he pays child support. He earned a General Educational Development (GED) certificate in December 1993, and enlisted in the Navy that same month. He was administratively separated for misconduct with a General Discharge under Honorable Conditions, at pay grade E-6, in January 2005. He held a security clearance during his naval service and interim clearances during several periods of overseas employment since then. (AR; GE 1; GE 4; GE 8; Tr. 66-71.) In his response to the SOR, Applicant admitted the truth of all of the factual allegations in the SOR, but denied current consumption of alcohol. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 4 and 5), are incorporated in the following findings.

Applicant occasionally consumed alcohol beginning at age 9, and began regular consumption to the point of intoxication just after he turned 18 and joined the Navy. As detailed in the SOR, he was awarded non-judicial punishment for underage drinking on or about May 19, 1994, and November 21, 1994. In November 1999, he was again awarded non-judicial punishment for a drunken incident involving indecent exposure and disrespect toward a superior commissioned officer while on liberty in an off-base bar overseas. After this incident, Applicant says that he abstained from alcohol until sometime in 2003 when he resumed heavy daily consumption of alcohol to the point of intoxication. In November 2003, after consuming about five glasses of wine with a girlfriend at a wine bar, Applicant went home and fell asleep. He had a personally-

owned .45 caliber pistol by his bed. He awoke after a bad dream and realized that he had accidentally shot himself through the hand with the pistol. (AR; GE 4; GE 7; GE 9; Tr. 49-52, 75-77.)

On July 15, 2004, Applicant was too intoxicated to drive when he left a bar located about three blocks from his home. It was hot and humid so, rather than drive or walk home, he turned on his engine and air conditioner and went to sleep in the back seat of his truck. A police officer awakened him, then arrested and charged him with Driving Under the Influence (DUI) of alcohol. After a trial, on October 6, 2004, he was found not guilty of the charge. (AR; GE 4; GE 14; Tr. 52-54, 78.)

On September 8, 2004, Applicant joined some friends at a bar after they learned that a colleague of theirs had died. He had four or five drinks, then was stopped for speeding 10 to 15 miles per hour over the limit while driving home. He was arrested for DUI and reckless driving after registering a blood alcohol content (BAC) of .10 on a Breathalyzer test. On November 1, 2004, he pled guilty and was convicted of misdemeanor DUI, and the reckless driving charge was dismissed. He was sentenced to 90 days in jail, all suspended, ordered to pay costs and fines of \$521, and his driver's license was suspended for a year. (AR; GE 4; GE 15; Tr. 79-80.)

On September 27, 2004, Applicant underwent an alcohol assessment through the Navy's Substance Abuse and Rehabilitation Program. He was diagnosed by a clinical psychologist with Alcohol Abuse, and some symptoms of Post Traumatic Stress Disorder related to his years of service as a Navy SEAL. He subsequently entered a 30-day inpatient alcohol treatment program. After successful completion of that program, his command gave him the choice of transferring out of the SEAL program into the surface Navy for the year remaining on his enlistment or accepting administrative separation. He chose the latter option, and was separated for Misconduct with a General Discharge under Honorable Conditions on January 3, 2005. (AR; GE 4; GE 8; GE 9; Tr. 80-83.)

After leaving the Navy, Applicant started drinking heavily again. On or about September 6, 2005, he drove his motorcycle home after drinking eight or more pints of beer with some students from a course he had just completed teaching. A police officer attempted to stop him for driving at 80 miles per hour in a 45 mile per hour zone, but he did not want to leave his motorcycle by the side of the road so he continued driving to his home. The police officer followed him and confronted him in his front yard. Applicant told the officer that he was home safely and just wanted to go to bed. As he tried to enter his house, the officer attempted to restrain him from behind. Applicant responded, using his SEAL training, by throwing the officer into some bushes and starting to run away. He then stopped and surrendered to the officer, who pepper-sprayed him and put him in restraints.<sup>1</sup> He was subsequently charged and convicted, as described in the SOR, of various charges including DUI, Driving After Forfeiture of License, and Assault

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<sup>1</sup>In one of Applicant's descriptions of this incident, he said that he resisted arrest until seven other officers arrived on the scene and finally subdued him. His current version omits this detail. (GE 4 at 398; Tr. 56.)

and Battery. On December 13, 2005, he was sentenced to serve 90 days in jail, with the remaining 90 days suspended, and fined approximately \$2,000. His driver's license was suspended for three years. (AR; GE 2; GE 4; GE 12; Tr. 54-57, 84-87.)

Applicant voluntarily entered another 30-day inpatient alcohol treatment program from November to December 2005. During treatment, he acknowledged his alcoholism. He convinced his counselor that he was serious in his desire to remain clean and sober, and had learned the skills and concepts necessary to do so. He agreed to follow recovery guidelines including a minimum of daily 12-step meetings, the intensive after-care program at the local Veterans Hospital, abstention from alcohol, adherence to any court/probation officer-imposed stipulations, working the 12-step program under his sponsor's guidance, and returning to work as soon as possible. The counselor also asked the court to take into consideration all the footwork Applicant had done to turn his life around when sentencing him, and said it was imperative that he be able to enroll in the Veterans Hospital intensive after-care program. (GE 10; Tr. 89-94.)

During his hearing, Applicant claimed that at some time during 2006, presumably after he completed serving his 90 days in jail, he relapsed into alcohol consumption for about a month, but has not drunk any alcohol since then. He has not participated in any of the recommended after-care or 12-step programs, but relies on his personal spirituality and support from his parents to remain sober. He now lives on and takes care of a remote rural farm owned by a friend, and hopes to work in alcohol-free areas during his prospective employment by a contractor. (Tr. 102-110.)

During several previous security clearance interviews and interrogatories, Applicant reported engaging in more recent and frequent alcohol consumption. During several of these statements, he reported his 2004 inpatient treatment at the Navy hospital, but denied or omitted his subsequent inpatient treatment in late 2005. On December 5, 2007, he said his alcohol consumption was under control, currently consuming about two drinks weekly, with his last intoxication at Thanksgiving with his family. (GE 4 at 384.) On January 17, 2008, he said that for the past year and a half he had consumed two pints of beer or a glass-and-a-half of wine weekly, except on holidays when he consumed eight to ten drinks. He was last intoxicated on January 1, 2008, when he drank 12 drinks of beer or tequila over six hours celebrating the New Year. (GE 4 at 402.) On March 12, 2010, he said that he only drank one or two drinks of either beer or wine on special occasions or at social events. He denied being addicted to alcohol, and said his future intent was to drink responsibly. (GE 4 at 406.) On July 14, 2010, he said that he had worked with his sponsor to abstain from drinking for two years after his 2005 inpatient treatment, but started drinking again in 2008 in very limited amounts. (GE 4 at 388.) In his sworn response to DOHA interrogatories signed October 24, 2011, he certified the accuracy of each of the foregoing statements to investigators. He further stated that he did not currently drink alcohol, and that he last consumed three to four beers per week in June 2010, wine in April 2010, three to four drinks of liquor per week in June 2010, and three to four mixed drinks containing liquor per week in April 2009. He also stated that he would never drink again. (GE 5 at 348 to 351.)

During January 2009, Applicant was arrested for Assault and Disorderly Conduct in an airport. His descriptions of events leading up to this arrest vary in his different interviews, but he was upset and loud during and after a telephone argument with a girlfriend. He entered a candy shop and, when he perceived that the clerk was being rude to him, bit the head off of a candy Barack Obama doll and spit it toward the clerk. Applicant said there was no alcohol involved during this incident, although he had taken a prescription Ambien pill. These charges were dismissed and expunged from his records on December 22, 2009. (AR; GE 2; GE 3; GE 4; Tr. 58-60, 95-96.)

Applicant was arrested again in June 2010, in a sports bar, and charged with Assault and Battery. He claimed that he was not drinking during this incident either. He met some friends who had gathered at the bar and were talking to some women. An intoxicated acquaintance of one of the women began challenging Applicant to arm wrestle, and later returned to shove him. Applicant had an injured knee, which gave way causing him to painfully fall backward. As he fell, Applicant punched the other man and knocked him unconscious. He helped the man up, and was arrested by an undercover police officer as he attempted to leave the bar. Applicant later compensated the man for his medical expenses and a week of lost wages, and the criminal charges were dismissed in October 2010. (AR; GE 5; GE 16; Tr. 60-65.)

Applicant submitted letters from seven Special Warfare officers and senior enlisted personnel with whom he served during his naval service and who have known him for many years. All of them expressed their very high opinions of Applicant's character, patriotism, trustworthiness, and ability to protect sensitive and classified information. (AE A through G.) He also submitted a letter from the president of a company that employs former special forces members to perform Government contracts, who had supervised Applicant during previous contract work on a Mobile Training Team. The company president expressed his full trust and confidence in Applicant's character and abilities, as well as his desire to employ Applicant should he become eligible for a security clearance. (AE H.) Applicant earned a Bronze Star Medal (with Combat V) for heroic achievement in connection with combat operations in support of Operation Enduring Freedom during 2003. (AR.) He also earned the Navy-Marine Corps Commendation Medal, the Army Achievement Medal, three Good Conduct Medals, multiple unit and expeditionary medals, and numerous warfare qualifications. (GE 8.)

## **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified 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 DCs raised by the evidence are:

(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;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant admitted the six alcohol-related incidents, set forth in SOR ¶¶ 1.a through 1.f, which occurred from 1994 to 2004 during his naval service. Another serious incident involving DUI and assault on a police officer occurred in September 2005. These incidents raise security concerns under AG ¶ 22(a). A “duly qualified medical professional” diagnosed Applicant with Alcohol Abuse before his first 30-day period of inpatient alcohol treatment in September 2004, supporting concerns under AG ¶ 22(d). Concerning AG ¶ 22(f), Applicant admittedly resumed heavy drinking after his 2004 inpatient treatment, including his September 2005 incident involving DUI and assault on a police officer. He attended another 30-day inpatient treatment program prior to his sentencing for that incident, but failed to comply with any of his agreed after-care requirements and resumed alcohol consumption shortly after his release from jail in 2006. Although he denied it during his hearing, he credibly admitted regular alcohol consumption up to at least June 2010 in several previous statements. He admittedly drank to the point of intoxication on holidays, including at least Thanksgiving 2007 and New Years Day 2008.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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 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.

Applicant has a very lengthy history of frequent alcohol abuse, leading to a series of criminal charges and other incidents demonstrating bad judgment. The evidence concerning recent abstinence comes only from his statements, which are inconsistent and contradictory. He previously tried to abstain from alcohol for at least one extended period, but resumed abusive consumption. Finding the most credible evidence to indicate he drank regularly as recently as June 2010, and given his refusal to follow any of the highly-recommended after-care treatment since his latest inpatient program, it cannot be determined that recurrence is unlikely or that doubts concerning his judgment and reliability are resolved. Mitigation was not established under AG ¶ 20(a).

Applicant claims to be currently abstinent, but offered contradictory statements concerning his alcohol consumption and dependency/abuse status throughout the past eight years since he first entered inpatient treatment. His continuing consumption was contrary to treatment recommendations, and he suffered multiple relapses to the point of intoxication following both of his 30-day inpatient treatment programs. He did not comply with required and recommended after-care treatments, and offered no evidence of a substantial support network or a favorable prognosis concerning future alcohol abuse. Accordingly, Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d).

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 DCs alleged by Department Counsel and supported by the evidence are:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations.

Applicant admittedly engaged in a series of disciplinary and criminal infractions in violation of rules, regulations, and laws, from 1994 to 2010. He claims that the two most recent incidents, involving disorderly conduct and assaultive behavior, were not alcohol related. While neither of these incidents resulted in criminal convictions, when viewed in context of the totality of Applicant's pattern of misconduct they support continuing concerns about his self-control, discipline, and ability to comply with applicable rules of conduct. Security concerns under AG ¶¶ 16(c) and (d) were raised by these facts, and the whole-person assessment will be further elaborated below.

Applicant offered insufficient evidence to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them apply. In particular, AG ¶ 17(c) does not provide mitigation for the reasons discussed above concerning AG ¶ 23(a), together with the additional allegedly non-alcohol-related assaults in 2009 and 2010.

### **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 pertinent facts and circumstances surrounding this case. Applicant provided exceptional service to the United States during several combat deployments and other assigned Navy Special Warfare missions. Many who served with him hold him in the highest regard. His patriotism, valor, and dedication to his fellow warriors are beyond question. He says that he now recognizes the adverse affects his alcohol consumption had on his judgment and behavior, and has resolved not to drink anymore.

Applicant is a mature individual who is accountable for his choices and actions. He built a 16-year-long pattern of multiple disciplinary and criminal infractions, most of which were alcohol-related. His inconsistent and contradictory statements concerning his post-treatment-program alcohol abuse, and two recent allegedly non-alcohol-related assaultive and disorderly incidents, preclude a supportable finding of permanent behavioral changes or rehabilitation. The potential for exploitation or duress is undiminished, and insufficient time has passed since his last drinking and arrest in June 2010 to conclude that recurrence is unlikely. Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his alcohol consumption and personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.l:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	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.

DAVID M. WHITE  
Administrative Judge