



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 11-05673
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: Stanley J. Mecinski, Jr., Esquire

07/31/2012

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**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

On April 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

In a response dated May 9, 2012, Applicant admitted the single allegations raised under each of the two guidelines set forth in the SOR and requested a hearing. DOHA assigned the case to me on June 21, 2012. The parties proposed a hearing date of July 17, 2012. A notice setting that date for the hearing was issued on June 25, 2012. I convened the hearing as scheduled. Applicant was represented by counsel, gave testimony, and introduced five documents, which were accepted into the record without objection as exhibits (Exs.) A-E. Department Counsel offered three documents, which were admitted as Exs. 1-3 without objection. The transcript (Tr.) of the proceeding was received on July 24, 2012, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden of

mitigating security concerns related to criminal conduct and alcohol consumption. Clearance is granted.

### Findings of Fact

Applicant is a 25-year-old college graduate with an associate's degree in electrical engineering and a bachelor of arts degree in humanities. He is currently employed as a technical report writer by a defense contractor, for which he has worked since November 2010. He is unmarried and has no children.

At age 21, Applicant was a collegiate upperclassman attending a large state university near a major metropolitan area. At that time, he was a member of a heavy metal band that performed on and around his school campus. As a senior, he would abuse alcohol on weekends, usually at home with his roommates.<sup>1</sup>

On May 10, 2009, Applicant and the band were performing at a club in a nearby city. They played a set, then Applicant began consuming alcohol, mostly rum and cola cocktails, around 7:00 or 8:00 p.m. They played more sets and Applicant continued to imbibe alcohol, eventually losing track of how much he had to drink. He did not ingest anything but cocktails. The band completed their act between 11:00 p.m. and midnight. Applicant blacked out at some point for an indeterminate period. He does not remember leaving the club. Despite protestations from his fellow band members, Applicant got in his car and started to drive back to campus. While approaching a highway, Applicant entered the road in the wrong direction, leading to a head-on traffic accident that involved injuries to two occupants in the other vehicle. One passenger received a slight concussion and the other broke a limb. Applicant was not injured.

Applicant was arrested at the scene by state police and charged with four different violations to which he ultimately pled guilty, including 1) driving in the wrong direction on a one-way road, 2) failure to control speed to avoid collision, 3) negligent driving, 4) driving under the influence of alcohol (DUI), 5) driving under the influence of alcohol *per se*, and 6) driving while impaired by alcohol. He was found guilty of failure to control speed to avoid collision and driving under the influence of alcohol *per se*. He has been "cooperative and very candid throughout this criminal justice process. . . ."<sup>2</sup>

As a result of his conviction, Applicant was sentenced to one year in jail (suspended), with three years of probation (including monthly urinalysis exams), ordered to eight months of home confinement with monitoring, required to complete 500 hours of community service, and required to complete an alcohol counseling program at a designated clinic. On his own initiative, he fulfilled the alcohol counseling program at the designated clinic by enrolling in its extensive, six-month, 26-part course for drug and alcohol rehabilitation and treatment. He was deemed by his primary counselor to be a

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<sup>1</sup> Tr. 33. Applicant noted that in his senior year, he would usually drink to the point of intoxication with his friends on Friday and Saturday nights when at school. He did not use alcohol the rest of the week. He accepted the use of the term "binge drinker" as an appropriate descriptor of his alcohol use. Tr. 34.

<sup>2</sup> Tr. 10.

“serious and committed client.”<sup>3</sup> When recommended, Applicant chose to supplement his treatment with attendance at Alcoholics Anonymous (AA). However, due to his home confinement and limited transportation resources, he was unable to attend it on a daily basis or for a protracted period of time, but he did attend AA for about four months in 2011.<sup>4</sup> He successfully completed the treatment program in January 2010 with the counselor’s assessment that he was an excellent client with perfect attendance.<sup>5</sup> This incident represents Applicant’s only criminal charge or conviction.<sup>6</sup> He successfully completed all court-ordered requirements without adverse incident or relapse, except for the three-year period of probation which does not end until October 2012. He has not consumed alcohol since the May 2009 accident.

Applicant applied for his present job through an acquaintance of his girlfriend. The acquaintance, in turn, forwarded his resumes to Applicant’s current employer. He was successfully vetted and hired in November 2010, with notice that he was required to pass a drug test and obtain a security clearance.<sup>7</sup> Applicant had disclosed his May 2009 DUI and facts related to his conviction. His employer thinks highly of him. He is described by two high-ranking officers as “an excellent employee” who “quickly assimilated” into their corporate team due to his skills and his dependability.<sup>8</sup> He has been cited for his maturation since starting work at his present place of business.<sup>9</sup>

Today, despite the extensive emotional and financial costs related to the incident, Applicant considers the May 2009 alcohol-related accident to have been a wake-up call.<sup>10</sup> It highlighted for him the immaturity and lack of self-control he exhibited while first living away from home, and away from stable parental influence.<sup>11</sup> He appreciates the gravity of his conduct and recognizes how fortunate he is that the results were not dramatically worse. Applicant takes full responsibility for his past

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<sup>3</sup> Tr. 19.

<sup>4</sup> Tr. 21-22. By that point, Applicant had been successfully abstinent since May 2009 and did not feel the need for further support in avoiding another episode of alcohol abuse.

<sup>5</sup> Tr. 23.

<sup>6</sup> The only other adverse information of note occurred in about 2006 or 2007, when Applicant was a teenager. At some point he and some roommates painted graffiti on a school housing hallway wall after imbibing alcohol. Applicant and his friends were subsequently evicted from that dormitory.

<sup>7</sup> Tr. 27.

<sup>8</sup> Tr. 29, *citing to* Ex. D (Joint Reference, dated May 9, 2012).

<sup>9</sup> Tr. 13.

<sup>10</sup> Tr. 30-31.

<sup>11</sup> Tr. 43.

criminal conduct and abuse of alcohol.<sup>12</sup> He feels that “had this incident not happened, his life would not be what it is today.”<sup>13</sup>

Applicant has amended his ways and changed both his “behavior and [his] mindset” to focus on self-control.<sup>14</sup> Once he started to accept responsibility for his life and his actions, he realized how important it was for him to mature, use solid decision-making, and behave like an adult.<sup>15</sup> He attributes much of his success to the protracted counseling and treatment program he chose because it helped get his “life on track” in an age appropriate manner. He also acknowledges the roles played by his supportive parents, friends, and girlfriend in helping him mature. He is no longer involved in heavy metal or a band. Applicant stays away from activities that involve “going out and drinking.”<sup>16</sup> He has “consciously made an effort to avoid corrosive influences [and] mindsets.”<sup>17</sup> He is now more discriminating in the types of people with whom he socializes and associates. He no longer speaks with those former peers who were involved in his former lifestyle.<sup>18</sup>

Applicant loves his job and will not do anything to jeopardize it. He thrives on the positive people and work there.<sup>19</sup> He now considers himself a happy person. He is aware that any future alcohol-related incidents would jeopardize any security clearance he might be granted, just as he recognizes that he must report any relapses in the next couple of months to both his security officer and probation officer. Although he is only required to abstain from alcohol until his probation ends in October 2012, he plans on staying abstinent until “a point where [he feels he] no longer needs to be”; he does not envision using alcohol in “the foreseeable future.”<sup>20</sup> Although he has had no problems with remaining abstinent, he identifies his parents, girlfriend, and new peers as an available support group should he need support in the future. Applicant would feel comfortable returning to his counselor if he felt the need for more intensive support. He genuinely does not want to disappoint himself, those individuals, or his employers in

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<sup>12</sup> Tr. 32,37.

<sup>13</sup> Tr. 31.

<sup>14</sup> Tr. 31, 37.

<sup>15</sup> Tr. 31.

<sup>16</sup> Tr. 43.

<sup>17</sup> Tr. 32.

<sup>18</sup> Tr. 43.

<sup>19</sup> Tr. 31.

<sup>20</sup> Tr. 35. Having succeeded thus far without relapse or incident, Applicant no longer reports to a probation officer in person. Rather, he now undergoes a simplified electronic sign-in process to denote his compliance.

any manner. Feeling in control of his life and more mature, he is confident that he will not relapse or again abuse alcohol.<sup>21</sup>

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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. The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>22</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>23</sup>

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 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.

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). "The clearly consistent standard

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<sup>21</sup> Tr. 44.

<sup>22</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>23</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>24</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>25</sup>

## Analysis

### Guideline J – Criminal Conduct

The concern under this guideline is that criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.<sup>26</sup> In this case, Applicant admits he committed a serious vehicular accident while under the influence of alcohol. He is currently completing his last 10 weeks of a three-year probation related to that accident. This is sufficient to raise both Criminal Conduct Disqualifying Condition AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*), AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*), and AG ¶ 31(d) (*individual is currently on parole or probation*). Consequently, it is Applicant’s burden to mitigate the security concerns raised.

Applicant’s drunk driving incident and the resultant accident occurred in May 2009, when Applicant was an undergraduate student. Given the facts leading to that accident, all involved are fortunate Applicant’s recklessness and criminal conduct did not result in more serious injury or death. Applicant is fully appreciative of this fact.

For Applicant, the accident served as a wake-up call to transition from a collegiate stage of feckless irresponsibility to an age-appropriate stage of maturity and accountability. To that end, he graduated from college and successfully completed a protracted counseling and treatment program which challenged him to take control of his life. He was noted as a genuinely committed participant during treatment. He found no difficulty in foregoing weekend binges with his former collegiate peers and he has turned his attention toward the future. He endured the court-related financial costs, restrictions, and extensive community service requirements without objection or complaint. While remaining abstinent, Applicant found a position in a career he highly values. There, he has had the opportunity to successfully mature and demonstrate professionalism. His work performance has impressed his superiors so much that they have given him superlative recommendations and advice for this process. Applicant will not jeopardize his present employment and the opportunity to further flourish professionally by reverting to another incident of criminal conduct.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> AG ¶ 30.

Meanwhile, in his personal life, Applicant has turned his back on his former lifestyle and attitudes in favor of more mature views and activities. He now eschews individuals and activities who do not share his new sense of responsibility and self-control. He spends his free time with his family, girlfriend, and professional peer group. With his maturation has come the recognition that he has the self-control to comport his behavior within both the boundaries of the law and acceptable social norms.

This singular criminal incident remains the only crime on his adult record. But for approximately two months of probation, he has completed all requirements related to his conviction, and he has straightened out his life. He has been abstinent for over three years. While three years is not a tremendously long period, it is a significant period in the life of a 25-year-old who, in the interim, has matured into a self-disciplined, law-abiding, college graduate and professional who is highly unlikely to again be involved in criminal activity. Criminal Conduct Mitigating Conditions AG ¶ 32(a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) and AG ¶ 32(d) (*there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*) apply.

### **Guideline G – 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.<sup>27</sup> In this case, Applicant admits he was a weekend binge drinker as an upperclassman. Such alcohol abuse led him to cause an alcohol-related vehicular accident in May 2009. Such facts are sufficient to raise Alcohol Consumption Disqualifying Conditions 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*) and AG ¶ 22(c) (*the 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*). Consequently, the burden shifts to Applicant to mitigate related security concerns.

The severity of Applicant's periodic weekend binge drinking during his senior year in college ultimately manifested itself in the traffic accident and conviction noted in the preceding section. The May 2009 accident, in which Applicant is lucky no lives were lost, served Applicant as a wake-up call. He has not imbibed alcohol since that time. He successfully completed an extensive alcohol counseling and treatment program, where he complied with all requirements and suggestions. He has been abstinent for over three years. He has formulated a realistic plan through which he might some day return to responsible alcohol use, although he does not foresee his straying from abstinence

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<sup>27</sup> AG ¶ 21.

in the near future. He has satisfied all but one of the onerous and costly court-ordered requirements imposed upon him with his conviction. The only thing remaining unfulfilled is about two months of probation.

Since May 2009, Applicant has demonstrated his ability to comport his behavior, including approximately 38 months of strict abstinence without temptation or relapse. While this is not an extraordinary amount of time, it is a highly significant period in the life of a 25-year-old. Given the unique facts in this case, Applicant's age, and his accomplishments to date, I find that Alcohol Consumption Mitigating Conditions 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*) and AG ¶ 23(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)*) apply.

### **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 circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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, as well as the "whole-person" factors. Applicant is a highly credible 25-year-old man. Free from the parental nest, he developed reckless habits in college, including binge drinking as an upperclassman. At age 21, his lack of self-control and immaturity became apparent to him when he caused a potentially fatal car crash on a highway after abusing alcohol.

Young enough to readily change his habits, but old enough to understand the reasons behind his alcohol abuse, Applicant immediately quit drinking alcohol. He completed his bachelor's degree program. He earnestly applied himself in satisfying the court's requirements after his conviction. He committed himself to regaining his self-control and successfully reaching maturity. Applicant searched for work until he found his current employer. That employer took a chance on Applicant, knowing of his 2009 alcohol-related crime. He impressed his employer with his work performance and enthusiasm to the point that they consider him a valued member of their corporate team. Outside the work place, he has changed his habits and behaviors. He has adopted a more positive and mature outlook. He prefers time with family and friends over carousing with buddies and frequenting bars as part of a band. He has successfully matured into a young working professional. I find it highly unlikely that he will jeopardize either his current work, outlook, or situation.



The only criterion remaining that keeps Applicant's May 2009 accident a matter of recent security concern is the fact that he is still on probation for his driving under the influence of alcohol *per se* and failure to control speed to avoid collision conviction. This factor would generally give me pause. However, Applicant has less than 10 weeks remaining on his three-year period of probation. By contrast, in the intervening 38 months, he has proven his ability to abstain from alcohol use and abuse; graduated college; turned his life around; found his professional niche; excelled in his personal and professional life; maintained an adult relationship; put his past poor judgment and behavior behind him; and matured considerably. I have no reservations that he has fully comported his behavior and conduct. Consequently, I see no purpose in denying him a security clearance at this point simply for want of about 10 weeks more of probation. In light of the distinct facts in this case, I find that Applicant mitigated criminal conduct and alcohol consumption security concerns. Clearance is granted.

### **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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge