



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



In the matter of: )  
)  
) ISCR Case No. 11-07475  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2013

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the criminal conduct and alcohol consumption concerns raised by his 19-year criminal history punctuated by five domestic violence arrests and five arrests for driving under the influence of alcohol. Clearance denied.

**Statement of the Case**

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,<sup>1</sup> on August 31, 2012, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the alcohol consumption and criminal conduct guidelines. DOD adjudicators were unable to find that it is clearly consistent with the

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960; as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR in September 2012 and requested a hearing. The case was assigned to me on November 6, 2012. At the hearing convened on December 12, 2012, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A and B, without objection. I received the transcript (Tr.) on December 20, 2012.

### **Findings of Fact**

Applicant, 60, has worked as a custodian for a federal contractor since 2007. Initially granted a security clearance in 2008, his clearance is being reviewed after a November 2010 DUI arrest. Applicant admits that he has been arrested at least 12 times between 1991 and 2010 for multiple offenses, including domestic violence, driving under the influence of alcohol (DUI), and larceny.<sup>2</sup>

Applicant's five domestic violence arrests, which resulted in two convictions, occurred during his first marriage. According to Applicant, his marriage was good until his ex-wife changed religions and began using drugs. Applicant takes no responsibility for the domestic violence incidents, instead blaming his ex-wife for calling the police anytime he confronted her about household issues. Applicant does admit pushing his ex-wife once, but only because she blocked the door when he tried to leave the house during an argument. According to Applicant, none of the domestic violence arrests were alcohol-related.<sup>3</sup>

Applicant testified that he did not begin consuming alcohol until his first marriage ended in 1997. Although he acknowledged occasional binge drinking, he does not believe that he developed a drinking problem. Applicant reported minimum alcohol consumption, claiming that he occasionally drank between three to seven beers at social gatherings with family or friends. However, Applicant's five DUI arrests suggest a more serious problem. In 1995 and 1998, Applicant was charged with DUI, having a blood alcohol content (BAC) over .10%. He pleaded guilty to the 1995 incident and served 10 days in jail. Charges in the 1998 incident and the three related failure to appear charges were dismissed on procedural grounds.<sup>4</sup> In 2001, Applicant was arrested after police observed his vehicle swerving in traffic. He pleaded guilty to extreme DUI with a BAC over .15% and served 10 days in a work-release program. In November 2010, Applicant hit a car occupied by a mother and her four children sitting at a stop sign as he attempted to make a right turn at an intersection. Applicant attempted to flee the scene of the accident before the police arrived, but was stopped by the other

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<sup>2</sup> Tr. 23-24, 45-46; GE 1.

<sup>3</sup> Tr. 25, 40-42, 44-45; GE.

<sup>4</sup> The court granted Applicant's motion to dismiss after the prosecution was unable to produce the identity of a civilian riding along with the police the night Applicant was arrested.

driver. Applicant's BAC measured .223%. He pleaded guilty to extreme DUI and was ordered to attend alcohol counseling. He also served 30 days in jail and one year of unsupervised probation.<sup>5</sup>

Applicant believes the bad part of his life, marked by his 12 arrests, is over. He is walking a better path, concentrating on being a good father to his three children, ages 5, 35, and 37. He is also making an effort to avoid bad relationships. Acting under the belief that alcohol was ruining his life, Applicant claims that he has not consumed alcohol since his November 2010 DUI arrest. He does not participate in any type of sobriety management program, but reads self-improvement books and talks through his problems with people at his job he described as being "educated." Despite his criminal history, Applicant has maintained a positive work history. He is seen by his co-workers as being a reliable, hardworking professional.<sup>6</sup>

### **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 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 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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<sup>5</sup> Tr. 26, 30-35, 37-39, 42-44, 48-51; GE 2-3.

<sup>6</sup> Tr. 16-22, 24, 28, 36-37, 51-54; AE A-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 protect 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 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

### Criminal Conduct

Applicant’s “criminal activity creates doubt about [his] judgment, reliability, and trustworthiness [because] it calls into question his ability or willingness to comply with laws, rules and regulations.” Applicant’s criminal history spans almost 20 years. His 12 arrests for a variety of offenses demonstrate a pattern of willful disregard for the law. Applicant’s inability to take responsibility for his actions prevents the application of any of the criminal conduct mitigating conditions in this case.<sup>7</sup> Neither does he receive any mitigating credit for the dismissed 1998 DUI nor the related failure to appear charges, which were not dismissed based on evidence of Applicant’s innocence, but because of a technicality.<sup>8</sup>

### Alcohol Consumption

Excessive alcohol consumption is a security concern because it “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>9</sup> Although Applicant has not been diagnosed as being an alcohol abuser or being alcohol dependent, his alcohol-related incidents away from work – five DUI arrests over a 15 year period – indicate a serious alcohol problem.<sup>10</sup> His DUI arrests are also evidence of habitual or binge consumption of alcohol to the point of impaired judgment.<sup>11</sup>

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<sup>7</sup> See ISCR Case No. 96-0710 (App. Bd. Jun. 20, 1997).

<sup>8</sup> See *e.g.* ISCR Case No. 87-0390 (App. Bd. Sep.21, 1989).

<sup>9</sup> AG ¶ 21.

<sup>10</sup> AG ¶22 (a).

<sup>11</sup> AG ¶ 22(c).

None of the alcohol consumption mitigating conditions apply. Applicant does not acknowledge his alcohol problem, even though he believes his consumption habits were having a negative impact on his life. Nor is he participating in any sobriety management program. Even if Applicant's claims of over two years of abstinence are to be believed, there is nothing in the record to support a finding that Applicant's alcohol issues are under control or that he is unlikely to drink and drive in the future.

### **Whole-Person Concept**

Accordingly, I have reservations and doubts about Applicant ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. Security clearance determinations are not limited to Applicant's conduct during duty hours; off-duty conduct can be considered in evaluating an applicant's security worthiness.<sup>12</sup> Applicant's off-duty conduct shows a pattern of poor judgment and disregard for the law. Furthermore, Applicant has failed to take responsibility for his actions or appreciate the severity of his conduct. He repeatedly engaged in conduct that endangered the lives of others. He expressed no remorse or concern over the potential consequences of his behavior. Ultimately, Applicant failed to mitigate the security concerns raised by his 19-year criminal history and his alcohol issues.

### **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.g:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a - 2.k:	For Applicant

### **Conclusion**

In light the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

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Nichole L. Noel  
Administrative Judge

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<sup>12</sup> ISCR Case No. 98-0620 (App. Bd. Jun. 22, 1999).