



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



In the matter of: )  
)  
) ISCR Case No. 11-08629  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Sean R. Dunn, Esquire

December 13, 2013

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant engaged in a series of alcohol-related and criminal violations from 1980 to 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**

On February 8, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct. The action was taken 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 (AG) effective September 1, 2006.

Applicant answered the SOR on March 18, 2013, and did not request a hearing. He subsequently requested a hearing before an administrative judge. The case was

assigned to me on October 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 16, 2013, scheduling the hearing for November 4, 2013. Applicant requested a continuance and based upon good cause it was continued to November 20, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6. GE 1 through GE 3, GE 5, and GE 6 were admitted without objection. Applicant's Counsel objected to the admission of GE 4 because the police report was redacted to conceal the identity of the victim. I overruled the objection. Applicant offered Exhibits (AE) A through F, which were admitted without objection. (Tr. 29-35.) Applicant testified on his own behalf and called one witness. DOHA received the transcript of the hearing (Tr.) on December 3, 2013.

### **Findings of Fact**

Applicant is 55 years old. He served on active duty in the Navy 1979 to 1985, and achieved the rate of petty officer first class (E-6). He has been working for as a government contractor since 1985. He has held a security clearance since joining the Navy in 1979. He is divorced and has two adult children. He is engaged to be married to his current girlfriend, who testified on his behalf. (AE 4; Tr. 42-47, 63-64, 66-67, 141.)

Applicant began consuming alcohol when he was in high school. He consumed beer at home on the weekends. Eventually, he altered his drinking habits to include consuming bourbon as well as beer at home on the weekends. He indicated he did not drink socially and did not frequent bars. He explained that it took him two cans of beer to get buzzed and he felt intoxicated after five cans of beer. (GE 4.)

Applicant was arrested for driving under the influence of alcohol (DUI) in February 1980. Applicant's blood-alcohol content (BAC) was .12%. He was found guilty of DUI and fined \$200. The Navy also required Applicant to complete a Naval Alcohol Safety Action Program. (GE 3; GE 4; Tr. 64, 106.)

Applicant was arrested for DUI in approximately October 1981. He was found guilty, fined, and his driver's licenses was suspended for three years. (GE 3; GE 4; Tr. 65-66.)

Applicant was arrested for DUI in 1992. He indicated his BAC was .19%. He was found guilty of DUI. He was sentenced to serve two days in jail and was fined approximately \$1,600. His drivers license was suspended. He attended a court ordered alcohol-awareness class twice a week for three months after this incident, according to his statement to an investigator. He was also required to participate in 10 Alcoholics Anonymous (AA) meetings. (GE 3; GE 4; Tr. 69, 81, 107, 109.)

Alcohol also played a role in Applicant's divorce and child custody agreement with his first wife. Applicant's custody agreement required him to "attend AA meetings" and "begin therapy to address substance abuse issues." Applicant testified that he went to AA as required by the court in order to see his children, but that he continued to consume alcohol. (GE 5; Tr. 83-86, 110-112.)

In February 2010 Applicant was arrested and charged with “hit and run w[ith] injury” and “DUI w[ith] injury,” a felony. Applicant pled guilty to the reduced charge of hit and run with property damage, a misdemeanor, and the remaining charges were dismissed. He was fined \$800, required to perform 40 hours of community service, and placed on probation for three years. Applicant is still on probation for this offense. He testified that this was not an alcohol-related offense, but admitted to becoming intoxicated at his home after he committed the hit and run violation. His BAC was .20%. (GE 4; GE 6; AE A; AE B; AE C; Tr. 71-72, 96-104, 120-128)

After Applicant’s February 2010 arrest, he abstained for alcohol use for over one year. However, he decided to resume alcohol use sometime after he met with an investigator regarding his clearance in April 2011. He testified:

For the year--almost a year--I think about that--after the "hit and run," I went on the wagon type a thing. But it was on my own. I did it by myself. After a while I thought, I'm no alcoholic, you know. That's--it's embarrassing to admit something like that. It means that I don't have control, and I don't have the power, and to--to--I don't have the will-power. So I can have a beer to drink at lunch . . . (Tr. 77-79.)

Similarly, in Applicant’s Answers to Interrogatories dated July 20, 2012, Applicant indicated he had resumed alcohol consumption. However, in January 2013, Applicant joined AA and testified he has not consumed any alcohol since then. His sobriety date is January 31, 2013. He participates in AA once a week. A letter from his sponsor indicated that Applicant “actively participates” and “is on a successful path to continued sobriety.” He acknowledged that he is an alcoholic and is powerless over alcohol. Applicant has not participated in any counseling or rehabilitation program, but testified he will seek professional help if he relapses. He testified that he has no intent to drink alcohol again, but could not guarantee abstinence. (Answer; AE D; Tr. 73-76, 87-95, 107, 113-119, 136-140.)

Applicant is well respected by those who know him, as verified by the witness who testified on his behalf. Additionally, Applicant presented letters of recommendation that attest to the high quality of his character and lack of security clearance violations. Applicant has been presented a number of achievement awards for his exceptional performance. (AE E; AE F; Tr. 42-59.)

## **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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 EO 10865 provides that adverse 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 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; and
- (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 was convicted of three DUI incidents spanning from 1980 to 1992. He also was alleged to have been intoxicated when he committed the hit and run violation in 2010. Whether or not he was intoxicated at the time of the 2010 incident, he was intoxicated at the time of his arrest. Applicant has a 30-year history of making poor decisions after becoming intoxicated. These incidents raise security concerns under AG ¶¶ 22(a) and 22(c).

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 of bad judgment. He previously tried to abstain

from alcohol for at least one extended period, but resumed abusive consumption. Not enough time has passed to determine that Applicant will be successful in his efforts to abstain from alcohol use. I cannot hold that recurrence is unlikely or that doubts concerning his judgment and reliability are resolved. Mitigation was not established under AG ¶ 20(a).

Applicant claims sobriety since January 31, 2013, but not enough time has passed to establish a pattern of abstinence. He has maintained his recent sobriety for less than one year. He has experienced longer periods of abstinence, but resumed drinking alcohol. While he now has the assistance of AA, he has been to AA in the past, such as when he was court ordered to attend in 1992 and 2000. Applicant failed to participate in any extended formal counseling, although it appears he attended court ordered counseling as a result of the custody agreement and relapsed. Accordingly, Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), 23(c), or 23(d).

### **Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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.

AG ¶ 31 describes conditions that could generate a security concern and may be disqualifying. The conditions potentially raised by the evidence are AG ¶ 31:

- (a) a single serious crime or multiple lesser offenses; and
- (d) individual is currently on parole or probation.

Applicant has been arrested four times, between 1980 and 2010, for multiple serious offenses. Additionally, he is currently on probation for his 2010 conviction. AG ¶¶ 31(a) and 31(c) are raised by the record.

AG ¶ 32 provides conditions that could mitigate criminal conduct security concerns. They are as follows:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (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.

Applicant's DUI's occurred because he has a problem with alcohol. Similarly, his judgment during his arrest in 2010 was impaired as a result of his alcohol consumption. As noted above, while Applicant has been sober since January 31, 2013, he has not yet demonstrated that future instances of criminal behavior are unlikely to recur. He has not yet demonstrated sufficient rehabilitation. Nor has sufficient time without recurrence passed, given that Applicant's violations span a 30-year time frame. AG ¶¶ 32(a) and 32(d) do not apply.

### **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 his Navy service and subsequent employment as a government contractor. He is well-respected by those that know him. However, Applicant is a mature individual who is accountable for his choices and actions. He built a 30-year-long pattern of criminal infractions, most of which were alcohol-related. The potential for exploitation or duress is undiminished, and insufficient time has passed since his last arrest in February 2010 and last drink in January 2013 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 criminal 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 G:      | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.e: | Against Applicant |
| Paragraph 2, Guideline J:      | 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.

Jennifer I. Goldstein  
Administrative Judge