



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03077
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

February 21, 2013

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**Decision**  
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CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 30, 2011. On October 12, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and E for the Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on October 23, 2012. He answered the SOR in writing on November 5, 2012, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on December 6, 2012. DOHA issued a notice of hearing on December 7, 2012, and I convened the hearing as scheduled on January 25, 2013. The Government offered Exhibits (GXs) 1 and 2, which were received without objection.

The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through D, which were received without objection. DOHA received the transcript of the hearing (TR) on February 4, 2013. The record closed on January 25, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, the Applicant admitted the factual allegations in Subparagraphs 1.b. and 1.c. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.a., 1.d. and 2.a. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

### **Guideline G - Alcohol Consumption & Guideline E - Personal Conduct**

1.a.~1.d. and 2.a. The Applicant started consuming alcohol around 1989, at about "the age of 20." (TR at page 23 lines 14~17, and GX 1 at page 5.) His drink of choice was "beer." He would "drink eight a night" with friends on weekends. (TR at page 24 line 1 to page 25 line 1.) This "drinking pattern continued until - - probably about 2002/2003," when he "started drinking more and more, and wanting it - - wanting alcohol." (TR at page 25 lines 7~12.) At times, he would go to work with a hang-over. (TR at page 27 lines 15~17.) His drinking pattern changed to where he was drinking "daily," about "five beers a night." (TR at page 28 lines 10~23.)

In about 2005, his drinking pattern started to include "shots of hard liquor." (TR at page 29 lines 4~14.) He first sought treatment for his drinking in March of 2009. (TR at page 30 lines 8~12.) He avers, "it was just controlling my life, and I wanted to get control back." (TR at page 30 lines 15~16.) This treatment, which lasted until June of 2009, "was a detox program, and then . . . an outpatient program." (TR at page 31 lines 5~8.) He left the program "one day early," as he was admittedly in "denial" as to his "alcoholism." (TR at page 31 line 22 to page 32 line 3.) He remained sober, for about four months, until his "father passed away in November" of 2009. (TR at page 32 lines 13~21.) The Applicant then started "drinking shots, and maintaining . . . [his] alcohol level with beer." (TR at page 33 lines 1~6.)

In January of 2010, the Applicant tested positive for THC, which he vehemently denies. (TR at page 43 line 9 to page 46 line 18.) This denial is supported by negative subsequent drug tests, and by those who know the Applicant and can testify as to his truthfulness and veracity. (AppXs A and C.) However, he was reprimanded by his employer for attendance problems; and in January of 2010, he referred himself to a second alcohol treatment program, "that was a six-week intense outpatient [program]." (TR at page 34 lines 4~18, and at page 43 line 9 to page 46 line 18.) This program lasted until April of 2010, and once again diagnosed the Applicant as being alcohol dependent. (TR at page 34 line 4 to page 35 line 7.) He remained sober, for about six months; but began drinking again; and by his own admission, he "was not working a recovery program." (TR at page 34 line 19 to page 35 line 14.)

In September of 2011, the Applicant entered a third treatment program, which lasted until November of 2011, when he again left the program a day early “in protest,” as he “was still in denial of . . . [his] alcoholism.” (TR at page 35 line 15 to page 36 line 21.) He “immediately began to drink. Not on a constant basis. It was more of a controlled [basis] . . . maybe a handful of times.” (TR at page 36 line 22 to page 37 line 4.) However, in March of 2012, a “niece - - that was very dear to . . . [the Applicant], passed” away. (TR at page 38 lines 1~8.) As a result, he again began to drink heavily. (*Id.*) He “was drinking straight shots” of hard liquor, and went on a “bender . . . for one month.” (TR at page 38 line 22 to page 39 line 5.)

On April 27, 2012, he “self-referred” himself for treatment for his alcohol dependency, and has not had a drink of alcohol since that date. (Tr at page 39 lines 6~22.) This last program consisted of “a 41-day inpatient program,” a “six-week outpatient” program, and a “continuing care” program, in which the applicant is “now in the last stage.” (TR at page 40 line 19 to page 41 line 10, and AppX D.) He also attends Alcoholics Anonymous (AA) “twice a week.” (TR at page 41 lines 8~22.) He has an AA sponsor, and intends no future consumption of alcohol.” (TR at page 47 line 2 to page 48 line 7, and AppX D.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to obtaining a favorable security 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 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**

### **Guideline G -Alcohol Consumption**

Paragraph 21 of the adjudicative guidelines sets out the security concern relating to Alcohol Consumption: “Excessive alcohol consumption often leads to the exercise of questionable judgment or failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”

The adjudicative guidelines set out certain conditions that could raise security concerns. Subparagraph 22(d) is applicable and provides that a “*diagnosis by a duly qualified medical professional . . . of alcohol abuse or alcohol dependence*” may be disqualifying. Since 2009, the Applicant, an admitted alcoholic, has been diagnosed as suffering from alcohol abuse or dependence on at least four occasions. Subparagraph 22(f) is also applicable and provides that a “*relapse after diagnosis . . . and completion of an alcohol rehabilitation program,*” may be disqualifying. He was admittedly in denial, and continued the consumption of alcohol after rehabs in 2009, 2010 and 2011. I can find no countervailing mitigation conditions that are applicable.

### **Guideline E - Personal Conduct**

The security concern for Personal Conduct is set out in Paragraph 15:

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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(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.*” Here, the Applicant has suffered from alcohol dependency from at least 2009. Again, I can find no countervailing mitigating conditions that are applicable. Subparagraph 17(c) is applicable where “*so much time has passed . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgement.*” The Applicant has less than a year of sobriety. In light of his past failed attempts at sobriety, it is too soon to say that his alcohol abuse is a thing of the past. However, if he continues his sobriety, he may be eligible for a security clearance in the future.

### **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 the circumstances. Under AG Paragraph 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has the unqualified support of those who know him in the work place and in the community. (AppX C.) However, at this time the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Alcohol Consumption and related Personal Conduct.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline E:	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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge