



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



In the matter of: )  
)  
) ISCR Case No. 12-04074  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carolyn H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

01/25/2013

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns pertaining to Guideline G (alcohol consumption). Clearance is denied.

**Statement of the Case**

On December 1, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 10, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD for SORs on September 1, 2006.

Applicant answered the SOR on November 2, 2012, and the Defense Office of Hearings and Appeals (DOHA) received his answer on November 7, 2012. Department Counsel was prepared to proceed on November 14, 2012. The case was assigned to

me on November 21, 2012. DOHA issued a notice of hearing on November 29, 2012, scheduling the hearing for December 20, 2012. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 and 2, which were received without objection. The Applicant testified, but did not offer any exhibits. DOHA received the hearing transcript (Tr.) on January 3, 2013.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. (SOR response, Tr. 10-11.) His admissions are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 58-year-old aircraft painter, who has been employed by a defense contractor since November 2011. (GE 1, Tr. 12-13.) He seeks a security clearance, which is a requirement of his continued employment. (Tr. 13-14.)

Applicant graduated from high school in 1976. He served in the Army National Guard as an enlisted person from April 1977 to February 1983, and was honorably discharged as a specialist 4 (pay grade E-4.) Apart from Army National Guard service schools, Applicant has no formal education beyond high school. Applicant never married and has no dependents. (Tr. 14-15, 28-29.)

### **Alcohol Consumption**

The facts are not in dispute. Applicant has a history of episodic alcohol abuse spanning 43 years. He has consumed alcohol to excess and to the point of intoxication since he was 15 years old until the present. Of particular concern is his history of drinking and driving that include five alcohol-related driving arrests and one incident of driving while intoxicated. Specifically these incidents include: (1) an April 1990 driving under the influence (DUI) arrest that resulted in Appellant being convicted of the charge and fined \$748; (2) a November 1997 DUI and open container arrest in which the charges were later dismissed; (3) a January 2002 DUI arrest that resulted in Appellant being convicted of the charge and sentenced to a \$855 fine, 12 months probation, and two days in jail; (4) a May 2004 DUI arrest resulting in being convicted of the charge and fined \$455; (5) an April 2005 DUI arrest in which the charge was later dismissed; and (6) an admission during his January 2012 Office of Personnel Management (OPM) interview that he last drove while intoxicated in December 2011. During that same interview, Applicant stated that he continues to drink alcohol and that he does not believe he has a problem with alcohol consumption. (SOR ¶¶ 1.a – 1.f, Tr. 16-26.)

Applicant has not participated in an alcohol-treatment program and claims that he is able to manage his drinking. He further claims that his drinking has never caused him any work-related problems nor has anyone ever told him that he has a drinking problem.

Applicant does not believe his five DUI arrests are an indication of a drinking problem. (Tr. 26-30.) He stated that he would like to get the issue of his security clearance resolved so he could remain at work. (Tr. 31.)

## **Policies**

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Alcohol Consumption**

Under Guideline G (alcohol consumption), the Government's concern is that 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 ¶ 21.)

The Government established its case under Guideline G through Applicant's admissions and the evidence presented. At times, Applicant consumed alcohol to excess and to the point of intoxication since he was 15 years old until the present, a period spanning 43 years. He has a history of five DUI arrests between 1990 to 2005 and one acknowledged incident of driving under the influence as recently as December 2011.

A review of the evidence supports application of two alcohol consumption disqualifying conditions. AG ¶ 22(a): "alcohol-related incidents away from work, such as driving while under the influence," and AG ¶ 22(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," apply.

Two alcohol consumption mitigating conditions under AG ¶ 23 are potentially applicable:

(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

(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).

AG ¶ 20(a) does not define the sufficiency of the passage of time, and there is no “bright-line” definition of what constitutes “recent” conduct. Based on my evaluation of the record evidence as a whole,<sup>1</sup> for reasons discussed *supra*, I am unable to apply AG ¶ 20(a). AG ¶ 20(b) does not apply because Applicant had not acknowledged that he has a drinking problem when the evidence clearly suggests otherwise. He claims that he can manage his drinking; however, as recently as December 2011 he drove while intoxicated. His assurances are insufficient to overcome his history of alcohol abuse and alcohol-related problems. I am still left with doubts regarding his ability to come to terms with the adverse effects alcohol has had on his life and have limited or no faith that his alcohol consumption problems are “unlikely to recur.”<sup>2</sup>

### **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. 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) 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.

Applicant has stated that he can manage his drinking and does not have a drinking problem. He provided no evidence from a qualified medical professional or licensed clinical social worker suggesting that concerns raised by his history of alcohol-related problems were as Applicant suggests “under control.” Applicant honorably served in the Army National Guard from 1977 to 1983 and has been working in the defense industry since November 2011. However, Applicant’s lengthy history of alcohol abuse and the related problems that alcohol consumption has caused him leaves me with doubt regarding his eligibility to hold a security clearance. Given his history, more is required than his assurances that he does not have a drinking problem.

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<sup>1</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)).

<sup>2</sup> These two mitigating conditions are discussed further in the whole-person analysis portion of this decision, *infra*.

To conclude, Applicant presented insufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole-person factors”<sup>3</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the guidelines. For the reasons stated, I conclude he is not eligible for access to classified information.

### **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

### **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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ROBERT J. TUIDER  
Administrative Judge

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<sup>3</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).