



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



In the matter of: )  
 )  
 ) ISCR Case No. 14-02669  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2016

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**Decision**

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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 concerns raised by his history of alcohol-related criminal conduct. Clearance is denied.

**Statement of the Case**

On December 18, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the personal conduct guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the 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.

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<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.

Applicant timely answered the SOR and requested a hearing. On April 4, 2016, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.<sup>2</sup> The parties complied and submitted documents by the April 15, 2016 deadline. At the hearing, which proceeded as scheduled on April 27, 2016, I admitted Government's Exhibit (GE) 1, Applicant's Exhibit (AE) A, and Hearing Exhibits I – II, without objection. The Defense Office of Hearing and Appeals (DOHA) received the transcript (Tr.) on May 10, 2015.

### **Findings of Fact**

Applicant, 46, has worked for his current employer, a federal contractor, since February 2013. He initially received a security clearance in 1993, while serving in the U.S. Army between 1990 and 1994. Applicant was granted an interim security clearance in 2005 while working for another contractor, but he was transferred to another position that did not required access to classified information. He completed his most recent security clearance application in February 2013, disclosing criminal incidents that occurred in 2001, 2011, and 2013. In addition to these three incidents, the SOR also alleges that Applicant was charged with an additional crime in 1998.<sup>3</sup>

In April 1998, Applicant admits that he was charged with driving under the influence of alcohol (DUI). At hearing, Applicant explained that he had been drinking alcohol during a visit with his parents. He left his parent's home after getting into an argument with his father. Applicant believes that he was stopped by a police officer for speeding, but testified that he cannot clearly remember the details of the incident. He received a deferred judgment, paid a nominal fine, and was ordered to alcohol counseling.<sup>4</sup>

In December 2001, he was charged with a misdemeanor for operating a vehicle under the influence (OUI) and that he paid a fine. In his answer to the SOR (Answer), Applicant explained that he was laid off from his job after the September 2001 terrorist attacks and that his life changed. He elaborated at hearing, explaining that he lost his job after his employer accused him of absenteeism. While unemployed, Applicant lost his home to foreclosure and his vehicle was repossessed. Applicant testified that he was in a bad place and felt as if he had nothing more to lose. While on a road trip, Applicant was stopped by police for speeding. Applicant, however, does not believe he was speeding, but was pulled over because he was driving through a small town late at night. During the stop, the officer discovered an open container of alcohol and a residual amount of marijuana in Applicant's car. Applicant was convicted and paid a fine.<sup>5</sup>

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<sup>2</sup> The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

<sup>3</sup> Tr. 15, 19; GE 1.

<sup>4</sup> Tr. 25-26, 31; Answer.

<sup>5</sup> Tr. 23-24; GE 1.

His next criminal incident occurred in June 2011. Applicant described the incident in his security clearance application as being charged with intent to drive under the influence of alcohol. He disclosed that he was convicted of the offense and sentenced to three days in jail, that his driver's license was suspended, and that he was ordered to attend alcohol counseling. According to Applicant, he injured himself on his lawnmower. Because he was unemployed and did not have medical insurance at the time, he decided to drink a six pack of beer to medicate the pain he felt from the injury. He decided to drive to a nearby store to buy more alcohol. He was approached by police while sitting in the parking lot of the store after making his purchase. Applicant claims that this event happened after he had abstained from alcohol for the previous eight years.<sup>6</sup>

The SOR alleges that in addition to being charged with OUI, that Applicant was also charged with refusing to submit to arrest or detention. At hearing, Applicant explained that he did not realize that he was being uncooperative. He admitted that he knew he was intoxicated and that he refused to take a breathalyzer test. He affirmed the description of events he provided in his security clearance application, but clarified that he attended a 30-day outpatient alcohol program voluntarily before realizing alcohol counseling was required as a condition of reinstating his license. Applicant testified that he also began attending Alcoholics Anonymous (AA) after this incident and that he continues to attend meetings regularly.<sup>7</sup>

The most recent criminal activity Applicant disclosed on his security clearance application occurred in January 2013, when he was charged with criminal mischief. According to Applicant's disclosure on his security clearance application, the incident occurred when he accidentally bumped the door of his employer's warehouse with his car, damaging it. In his Answer, Applicant explained that the door was weak and old. He was charged after calling his employer to self-report the accident. Applicant affirmed this story at hearing.<sup>8</sup>

Upon further examination from Department Counsel and the bench, it became apparent that Applicant also has a longstanding problem with alcohol. Applicant admitted he began abusing alcohol during his senior year of high school when a sports injury ended his high school athletic career and his ability to play sports on a collegiate level. Although he was not diagnosed with alcohol abuse or dependence after the court-order alcohol counseling he attended in 2001, Applicant believed that he had a problem with alcohol at the time of the incident. In 2003, Applicant's alcohol problem prompted an intervention from his sister after he attended his nephew's sporting event intoxicated. At his sister's urging, Applicant attended a 25-day inpatient alcohol treatment program. He did not disclose this treatment on his security clearance application because he was concerned about raising a red flag about his alcohol consumption. Applicant also admitted that his previous claims of eight years of sobriety between his 2003 treatment

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<sup>6</sup> Tr. 21-22; GE 1.

<sup>7</sup> Tr. 21-22.

<sup>8</sup> Tr. 20-21; GE 1.

and his 2011 arrest were not true. He began drinking again at least a month before the arrest. He did not contact his AA sponsor when he began drinking again or after the 2011 incident.<sup>9</sup>

Also on cross-examination, Applicant provided additional details about his 2011 and 2013 arrests. During the 2011 incident, Applicant admits that he consumed 12 beers, not six, before deciding to drive to a nearby store for more alcohol. Applicant also admitted telling the arresting officer that he planned to run if the officer tried to arrest him. The circumstances of the January 2013 arrest were not as benign as he initially described. Earlier that day, Applicant quit his job after a dispute with other co-workers. When he got home, Applicant consumed at least three beers. While walking his dog, Applicant discovered a piece of pipe on his property that he believed was placed there by one of his former coworkers. Angry, Applicant drove to his former worksite intent on confronting someone about the pipe. Finding no one at the site, Applicant intentionally rammed his car into the warehouse door. Later, Applicant realized the pipe was from a fixture on his property.<sup>10</sup>

Applicant admits that he uses alcohol to cope with stress and other emotional and physical difficulties. He began drinking again after relocating to his current state. He has not been able to rebuild the support system he had in his prior location. Applicant thought that consuming alcohol again would make it easier to socialize, explaining “. . . [I]t is very hard to be social when you don't drink. It's like hanging out at an eight-year-old's birthday party.” Applicant recognizes the destructive force alcohol causes in his life. As soon as he started drinking in 2011, Applicant started to feel as if he “was losing everything again . . . a downward trend happens every time to me. It's just like karma for me when I drink; it's just bad things happen.” Applicant continues to consume alcohol and occasionally attends AA meetings. He also seeks occasional counseling at his church. His family is aware of his drinking and has expressed their concerns. However, Applicant does not believe that his alcohol problems have had any impact on his professional life. He believes that his work history and reputation, as described by his supervisor, outweigh any concerns potentially raised by his alcohol consumption.<sup>11</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 AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

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

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<sup>9</sup> Tr. 26-30.

<sup>10</sup> Tr. 32, 36-37, 41-44.

<sup>11</sup> Tr. 29, 34-36, 38-40, 45-48; GE 1; AE A.

classified information will be resolved in favor of national security.” 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.

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**

An applicant’s personal conduct becomes a security concern when he acts in a way that raises questions about his judgment or his ability to protect classified information.<sup>12</sup> The SOR alleges and Applicant admits that he was charged with criminal offenses in 1998, 2001, 2011 and 2013. Applicant’s conduct is disqualifying under the general concern that Applicant engaged in conduct that shows questionable judgment.<sup>13</sup>

Based on Applicant’s disclosures in his security clearance application, the Government reasonably alleged Applicant’s criminal activities, 4 incidents in 15 years with the most recent seeming relatively minor, under the personal conduct guideline. However, at the hearing it became clear that the alleged misconduct would have been sufficient for disqualification under the criminal conduct and alcohol consumption guidelines. Throughout the adjudication, Applicant minimized the role alcohol played in the alleged incidents, particularly those that occurred in 2011 and 2013. He also deliberately failed to disclose his inpatient alcohol treatment in 2003 to avoid raising any concerns about a potential alcohol problem in his adjudication.

Because Applicant’s alcohol history and his failure to disclose the extent of it are not alleged in the SOR, these facts may not be used as an independent basis for denying Applicant’s application for a security clearance. However, conduct not alleged in the SOR may be considered to assess an applicant’s credibility; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant

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<sup>12</sup> AG ¶ 15.

<sup>13</sup> AG ¶ 15.

has demonstrated successful rehabilitation; or as part of a whole-person analysis.<sup>14</sup> I have considered the unalleged conduct for these limited purposes.

None of the personal conduct mitigating conditions apply. Applicant's offenses cannot be considered minor. On multiple occasions, he consumed alcohol and decided to operate a vehicle, endangering himself and those sharing the road with him. The first occurred when Applicant was 28 years old, the most recent when he was 43. These incidents cannot be excused as youthful indiscretion or immaturity. Applicant was old enough to know and understand the potential ramifications of his actions. These four incidents are not mitigated because they occurred infrequently. His actions constitute a pattern of behavior that shows a disregard for laws and regulations. Each incident happened under circumstances making recurrence more likely than not. In each incident, Applicant was using alcohol to self-medicate stress or some other emotional difficulty. He has not developed any other coping mechanisms to deal with stressful or difficult issues in the future. Applicant also acknowledges the negative role alcohol plays in his life, but has done nothing to change his behavior. He is not dedicated to a sobriety management plan. He has not sought an effective means of counseling or taken any other positive steps to help him learn how to manage his stressors. Because this underlying issue remains unresolved, Applicant is vulnerable to future incidents of alcohol-related criminal conduct.

### **Whole-Person Concept**

Based on the record, I have significant reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. The facts in this case support an unfavorable whole-person assessment. Applicant has exhibited a history of poor judgment. He has also displayed a lack of candor on his security clearance application. The inconsistent testimony he offered at hearing also supports an adverse credibility determination. The cumulative effect of these concerns raises doubts about Applicant's ability to properly protect and handle 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, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

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<sup>14</sup> ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

## **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. Clearance is denied.

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Nichole L. Noel  
Administrative Judge