



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



In the matter of: )  
 )  
 [NAME REDACTED] ) ISCR Case No. 14-04014  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2017  
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**Decision**  
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BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns stemming from his alcohol consumption and drug involvement. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 20, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption, and Guideline H, drug involvement. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 7, 2016, and he requested a hearing before an administrative judge. The case was assigned to me on January 25, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 17, 2017, scheduling the hearing for March 7, 2017. I convened the hearing as

scheduled. Government Exhibits (GE) 1-9 were admitted without objection. Applicant testified and presented Applicant Exhibits (AE) A-D, which were admitted without objection. I received the hearing transcript (Tr.) on March 27, 2017.

### **Findings of Fact**

The SOR alleges security concerns involving Applicant's alcohol consumption and drug involvement. Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 52 years old. He has been a DOD contactor since December 1984, though he was briefly unemployed from December 2014 until about May 2015.<sup>1</sup>

Applicant used marijuana on approximately ten occasions when he was 13 or 14 years old. He purchased marijuana cigarettes from friends at the time. A few years later, he began consuming alcohol. At age 21, his alcohol consumption began to increase to the point he was consuming about nine or ten beers a night on the weekends. He was charged with and convicted of operating under the influence (OUI) in 1985, 1988, and 1991. He was twice ordered to attend alcohol treatment. In 1992, during his court-ordered rehabilitation program, he was diagnosed with alcohol dependence and polysubstance abuse. His continuing care plan included attendance at Alcoholics Anonymous (AA) meetings, and his prognosis was guarded.<sup>2</sup>

In a September 1991 signed, sworn statement, Applicant acknowledged that he was addicted to alcohol and considered himself an alcoholic. He admitted to brief periods of abstinence followed by relapses, and he expressed an intent to abstain from further alcohol use.<sup>3</sup>

As a result of his alcohol problems, Applicant's DOD security clearance was initially denied in 1991. At his security clearance hearing in 1993, he testified that he had been sober for about 12 months. Applicant's clearance was granted shortly thereafter.<sup>4</sup>

Applicant remained sober until about 1995. He then regularly consumed alcohol on the weekends. After he moved in 2001 and lived near a neighborhood bar, his drinking increased. His alcohol consumption lowered his inhibitions and led to his cocaine use. From January 2009 to June 2011, Applicant frequently used cocaine. His cocaine use increased to as often as weekly during this period. He purchased cocaine through an acquaintance at the neighborhood bar, spending as much as \$1,200 a month on cocaine. In June 2011, he informed his family and his employer about his

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<sup>1</sup> GE 1.

<sup>2</sup> Response to SOR; GE 3-6; Tr. 40-41 (discharge diagnosis determined by treatment team at hospital).

<sup>3</sup> Response to SOR; GE 4.

<sup>4</sup> Tr. 39-46.

problem with drugs and alcohol. He subsequently tested positive for cocaine and voluntarily attended drug treatment for about four months. He was diagnosed with alcohol and cocaine dependence, and it was recommended that he attend AA meetings and abstain from alcohol and drugs <sup>5</sup>

He remained sober until about spring 2012 and then relapsed into alcohol use. In April 2013, Applicant was interviewed by an OPM investigator, and he was still drinking alcohol at the time. In November 2013 and November 2014, he relapsed and used cocaine about three times during each relapse.<sup>6</sup>

In December 2014, Applicant quit his job, sold his house, and moved in with his mother about 45 miles away. He regularly attended AA meetings and church services, and he avoided the individuals and environment where he had previously used drugs and alcohol. After several months, he contacted his employer and was rehired. He continues to attend two or three AA meetings each week. He has not consumed alcohol or used illegal drugs since December 2014.<sup>7</sup>

Applicant again sought substance abuse treatment in February 2016 for additional support and counseling. He was diagnosed with alcohol and drug dependence. He attributes his drinking to having been sexually abused as an adolescent and keeping his abuse a secret until December 2014.<sup>8</sup>

Applicant's several performance reviews and a certificate establish that he is well-regarded by his supervisors. His current supervisor provided a letter of support acknowledging Applicant's past alcohol problems, his efforts to change his circumstances and maintain his sobriety, and his favorable work performance. Letters of support from Applicant's pastor, supervisor, and AA sponsor praise his character and his efforts to remain sober. Applicant's mental health counselor indicates that he has been in counseling since April 2016, is on psychiatric medication, has quit smoking, regularly attends AA meetings, and has been sober since December 2014.<sup>9</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

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<sup>5</sup> Tr. 49, 52, 53, 68

<sup>6</sup> GE 2.

<sup>7</sup> Tr. 63

<sup>8</sup> Tr. 59, 62, 78, 81; GE 7 (diagnoses made by licensed clinical mental health counselor at treatment facility).

<sup>9</sup> AE A-D.

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 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. As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>10</sup> Under *Egan*, EO 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting 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 the 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 safeguard 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 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).

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<sup>10</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988). See *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

## Analysis

### Guideline G, Alcohol Consumption

The SOR alleges that Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1978 to at least December 2014 (SOR ¶ 1.a); that he attended alcohol treatment and was diagnosed with alcohol dependence (SOR ¶¶ 1.d. and 1.e.); that he had multiple alcohol-related convictions (SOR ¶¶ 1.f., 1.g., and 1.h.); that he relapsed and that his alcohol use contributed to his cocaine use (SOR ¶¶ 1.b. and 1.c.).

The security concern under this guideline is set out in AG ¶ 21: “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.” The evidence raises two disqualifying conditions under this guideline:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence . . . .;

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;

AG ¶ 22(e): evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

AG ¶ 22(f): relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program.

Applicant’s alcohol consumption, relapses, diagnoses of alcohol dependence, and OUI convictions establish AG ¶¶ 22(a), 22(c), 22(e), and 22(f).<sup>11</sup> The burden thereby shifts to Applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the burden of proving a mitigation condition, and the burden of disproving it never shifts to the Government. The following mitigating conditions are potentially applicable:

AG ¶ 23(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;

AG ¶ 23(b): the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this

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<sup>11</sup> See ISCR Case No. 07-00558 at 5 (App. Bd. Apr. 7, 2008) (AG ¶¶ 22(d) and (e) “contemplate a broad range of providers who by education and by position, are qualified to diagnosis and treat alcohol dependence and other substance abuse disorders.”)

problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

AG ¶ 23(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 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.

Under AG ¶ 23(a), the first prong of this mitigating condition (“so much time has passed”) focuses on the recency of the conduct. There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on a careful evaluation of the evidence. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”

Applicant has abstained from alcohol for over two years, which is a “significant period of time.” Compared with the over 30 years of alcohol abuse, treatment, and relapse, this two-year period of abstinence is relatively brief. Furthermore, he relapsed following a similar period of abstinence between 1992 and 1995. Although Applicant has taken positive steps to change his environment and implement a support structure, it is simply too early to conclude that such problems are unlikely to recur. AG ¶ 23(a) does not apply.

Applicant has acknowledged his alcohol problem and taken positive steps in support of his sobriety – his voluntary attendance and active involvement at AA meetings, his disclosures about his past sexual abuse, his relocation, and his mental health counseling and medication. Although his two years of sobriety is a significant period of time, his 30-year history of alcohol abuse and relapses after lengthy period of abstinence prevent me from concluding that he has established a pattern of abstinence at this time. AG ¶ 23(b) does not apply.

Applicant has attended mental health counseling with a licensed clinical mental health counselor since April 2016. The counselor did not provide a favorable prognosis or assessment but did corroborate Applicant’s actions in support of his sobriety. Because Applicant has not successfully completed inpatient or outpatient counseling or rehabilitation since his last relapse in 2012, AG ¶ 23(d) does not apply.

After decades of alcohol abuse and relapses, Applicant actively pursued and implemented changes in his life in support of his sobriety. His support structure includes his co-workers, his family, fellow church members, his therapist, and his AA sponsor. He is on the right course to maintain his sobriety, yet it is too early to conclude that he has mitigated the alcohol consumption security concerns.

## Guideline H, Drug Involvement

The concern under this guideline is set out in AG ¶ 24: “Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.” Drugs are defined in AG ¶ 24(a)(1) as “[d]rugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens).”

Disqualifying conditions under this guideline include:

AG ¶ 25(a): any drug abuse, defined in AG ¶ 24(b) as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction”;

AG ¶ 25(b): testing positive for illegal drug use;

AG ¶ 25(c): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

AG ¶ 25(e): evaluation of drug abuse or dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program; and

AG ¶ 25(g): any illegal drug use after being granted a security clearance.

Applicant illegally used and purchased illegal drugs, notably cocaine, after becoming an adult. His cocaine use occurred while he possessed a security clearance, and he tested positive for cocaine in June 2011. He was diagnosed with cocaine dependence by qualifying medical professionals at treatment facilities in 2011 and 2016. Thus, AG ¶¶ 25(a), 25(b), 25(c), 25 (e), and 25(g) apply.

The Government established a case for disqualification. Accordingly, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>12</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>13</sup> The following mitigating conditions are potentially relevant:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not

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<sup>12</sup> Directive ¶ E3.1.15.

<sup>13</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 26(b): a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.

Like AG ¶ 23(a), the AG ¶ 26(a) analysis includes recency, changes circumstances, and reform and rehabilitation, but in the context of drug involvement. Applicant's admitted cocaine use occurred about weekly for two and a half years, while he was employed by a DOD contractor and after he had been granted a DOD Secret clearance. Such conduct not only was illegal and violated DOD policies, but it also represented a breach of trust bestowed upon those entrusted with safeguarding classified information. Although Applicant has taken steps to remove himself from the environment wherein he used drugs in the past, his frequent drug use while possessing a security clearance casts doubts on his reliability and judgment, AG ¶ 26(a) does not apply.

Applicant has abstained from illegal drug use for over two years, and he no longer associates with individuals with whom he had previously used illegal drugs. He expressed an intent to cease any further illegal drug use. Because Applicant has changed his environment and no longer associated with drug-using associates, AG ¶ 26(b) applies.

Notwithstanding Applicant's expressed intent to cease further illegal drug use, his weekly cocaine use for about two years while possessing a security clearance violated federal and state laws and DOD policies for those entrusted with access to classified information. Therefore, I find that drug involvement concerns remain.

### **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. In light of all the facts, I have considered the potentially disqualifying and mitigating conditions, and I have incorporated my comments under Guideline G, Guideline H, and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant is a longtime employee of a DOD contractor, and he is highly regarded by his supervisor and co-workers. He has taken positive steps in support of his sobriety, though it remains too soon to conclude that alcohol problems will not recur. His frequent cocaine use while possessing a security clearance was a significant breach of trust that continues to cast doubt on his reliability and good judgment. As a result, the totality of the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the alcohol consumption and drug involvement security concerns.

### **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:  
Subparagraphs 1.a.-1.h.

AGAINST APPLICANT  
Against Applicant

Paragraph 2, Guideline H:  
Subparagraphs 2.a.-2.d.:

AGAINST APPLICANT  
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.

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Eric H. Borgstrom  
Administrative Judge