



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



In the matter of: )  
 )  
 ) ISCR Case No. 14-04047  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

11/03/2016  
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**Decision**  
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CERVI, GREGG A., Administrative Judge:

Applicant mitigated the criminal conduct and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86)<sup>1</sup> on January 14, 2013. On October 28, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, criminal conduct, and Guideline E, personal conduct.<sup>2</sup>

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<sup>1</sup> Also known as a Security Clearance Application (SCA).

<sup>2</sup> 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 November 17, 2015, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5, 2016, scheduling the hearing for June 29, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted into evidence without objection. Applicant's Exhibits (AE) A and B were admitted without objection. DOHA received the hearing transcript (Tr.) on July 6, 2016. The record was held open for Applicant to submit documents in support of his case. He submitted AE C through J, which were admitted without objection.

### **Findings of Fact**

Applicant is 42 years old, and is employed as a training manager for a defense contractor since 2001. He is applying to continue his security clearance. He was awarded an associates degree in 2013 and bachelor's degree in 2014, and is four classes away from attaining his master's degree. He is currently pursuing a master's degree. He honorably served in the U.S. Navy from 1992 to 2005, and in the U.S. Navy Reserve from 2005 to 2007. He was discharged as a Petty Officer First Class (E-6). He was married in 2001 and has four children, ages 10, 14 and twin 13 year olds.

The SOR alleges under Guideline J, five instances of criminal conduct. From 1995 to 2004, Applicant was disciplined while in the military for three offenses involving alcohol. In 2011, while a civilian, he was arrested for driving under the influence of alcohol (DUI) and misdemeanor assault on a family member. The SOR also cross-alleges these offenses under Guideline E. He admitted the Guideline J allegations, and denied the Guideline E allegation.

In 1995, Applicant received non-judicial punishment (NJP) for an incident when he was drinking with friends at a housing area and was observed by shore patrol urinating behind a tree. He was nearly 21 years old and states that he was assigned to the first ship that included female sailors, so underage drinking and fraternization were included in the charges. He described the incident as "stupidity" on his part. In 1996, Applicant received an NJP for missing the movement of his ship, and drunk and disorderly after he was intoxicated during a port call in Hawaii and was arrested while trying to walk back to the ship. He was in jail awaiting a court appearance when his ship departed for its homeport without him. In 2004, while stationed overseas, Applicant stopped after work to drink alcohol, and returned to his car with a flat tire. While changing the tire, local police stopped to question him and turned him over to his command.

In 2011, while drinking at home, Applicant argued with his spouse, called police, and while talking to the officer, pushed his spouse away from him. He was arrested for assault on a family member, but the charge was dismissed because there was no prior incident of abuse. He described this incident as "his stupidity" as well. Again in 2011, Applicant was leaving a business dinner out of state when he was stopped by police while driving and arrested for DUI. Applicant pleaded guilty and was required to complete an alcohol rehabilitation program. Applicant returned to his home state,

completed an adult intensive outpatient program in 2012, but later learned the court required it to be a course related to alcohol and driving (AE H). Applicant completed an alcohol safety action program which included alcohol/substance abuse education classes from June 2013 to March 2014 (AE I). His classes required regular substance testing, but did not result in an alcohol related diagnosis. Since 2011, Applicant has been attending Alcoholics Anonymous (AA) meetings, and has a sponsor that submitted a letter in support of his sobriety efforts (AE F). He stated he has not consumed alcohol since 2011, and changed his environment where alcohol is prevalent, including a job where alcohol use was common, and his home life has improved. He changed his lifestyle to substitute drinking with pursuing his college education, community events, and his children's activities such as becoming the swim team president and coaching two softball teams. He provided letters of recommendation from coworkers that know him on and off the job, including a supervisor, and are aware of his past alcohol related incidents. They attest to his character and dedication, and having never seen him drink at social events.

## **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.

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. 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."

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).

## **Analysis**

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’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 raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has multiple alcohol-related arrests, a conviction for DUI and three non-judicial punishment actions while in the military. The above disqualifying conditions are applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (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 admitted the offenses and described most of them in terms of his stupidity. He is no longer on probation, and he acknowledged that his alcohol use lead to criminal conduct. He has turned his life around. He no longer puts himself in situations where alcohol is used, and changed jobs to avoid excessive alcohol use. Although he was not diagnosed with an alcohol related disease, he discontinued alcohol use in 2011, successfully completed two intense alcohol rehabilitation courses that included substance testing, and continues to attend AA meetings. His home life has improved, and he is active in the community and his children's activities. He has the support of his AA sponsor, coworkers, and management. He has turned his attention to completing his college degree and is four classes away from a master's degree. AG ¶ 32(a) and (d) apply.

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition under AG ¶16 is:

(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.

Although the SOR offenses listed under Guideline J, that underlie the Guideline E allegations, are sufficient for an adverse determination under that guideline, I will consider them under AG ¶ 16(c). Applicant's criminal history, viewed together in a holistic fashion, presumes an assessment of questionable judgment and an unwillingness to comply with rules and regulations.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Although the offenses are not necessarily minor, the last serious offense that resulted in a DUI conviction was in 2011. The common factor in the criminal conduct allegations is alcohol use. By 2011, Applicant concluded that alcohol was leading to continued criminal offenses, and a change in lifestyle was necessary. He acknowledged his past behavior, obtained counseling, and continues to attend AA meetings in his efforts to maintain sobriety. He changed his environment, and has improved his life through education and community involvement. He has not consumed alcohol since 2011, and has no pending criminal actions. Through the support of his family and coworkers, I believe Applicant has turned the corner on his criminal activity and alcohol abuse, and his judgment is no longer at issue. AG ¶ 17(c), (d) and (e) 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J and E in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the criminal conduct and personal conduct 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 J:	For Applicant
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Subparagraphs 1.a-1.e:	For Applicant
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Paragraph 2, Guideline E:	For Applicant
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Subparagraph 2.a:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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GREGG A. CERVI  
Administrative Judge