



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-05759  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

10/18/2016  
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**Decision**  
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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He did not present sufficient documentary evidence to mitigate the concern stemming from his history of treatment for excessive consumption of alcohol. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on February 14, 2014.<sup>1</sup> One year later on February 17, 2015, after reviewing the application and information gathered during a background investigation, the Department of Defense (DOD)<sup>2</sup> sent Applicant a statement of reasons

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<sup>1</sup> Exhibit 4 (this document is commonly known as a security clearance application).

<sup>2</sup> The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

(SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.<sup>3</sup> The SOR is similar to a complaint. It detailed the reasons for the action under the security guideline known as Guideline G for alcohol consumption. Applicant answered the SOR with a one-page memorandum on March 17, 2015.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record.<sup>4</sup> On August 4, 2015, Department Counsel submitted all relevant and material information that could be adduced at a hearing.<sup>5</sup> The file of relevant material (FORM) was mailed to Applicant on January 12, 2016, who received it on February 16, 2016. He did not reply within the 30-day period from receipt of the FORM. The case was assigned to me on October 11, 2016.

### **Findings of Fact**

Applicant is a 57-year-old employee who requires a security clearance for his job as a technical writer and editor for a company working in the defense industry. He has been so employed since 2014. He worked in a similar capacity for another defense contractor during 2011–2012. He has worked as a writer and editor since at least 1996. His employment history includes honorable service in the U.S. Army during 1979–1984. He earned an associate's degree in 1987 and a bachelor's degree in 1989. He married in 1984, and he has two adult children. He and his spouse have lived at the same residence, which they own, since 1991.

Under Guideline G, the SOR alleges three items concerning Applicant's history of treatment for excessive consumption of alcohol: (1) he attended an alcohol counseling program at treatment center one (TC1) from December 2013 to April 2014, and was treated for depression, pain management, and alcoholism, and his prognosis regarding alcohol use was poor; (2) he attended alcohol counseling at TC2 from February 2007 to November 2007, and from January 2009 to August 2013, during which time he was diagnosed with alcohol dependence, generalized anxiety, and major depressive disorder; and (3) he continues to consume alcohol notwithstanding the diagnosis of alcohol dependence. In his answer to the SOR, Applicant admitted the SOR allegations and provided an explanation as summarized below.

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<sup>3</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense 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 here. 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.

<sup>4</sup> Directive, Enclosure 3, ¶ E3.1.7.

<sup>5</sup> The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

Applicant explained that he has taken steps to overcome his past problems with alcohol. He stated that he entered a three-day detoxification program in 2007, after his use of alcohol became excessive. He completed the program and continued to see counselors and attend meetings until he felt he had no more to gain from participation. He stated that he now takes an antidepressant drug daily and meets with a counselor several times a year to track his progress. He was not familiar with the diagnoses mentioned in the SOR allegations, and believes them to be disproportionate and reflective of differences of opinion concerning people who return to social drinking after therapy. He stressed that his ongoing monitoring of his use of alcohol is voluntary on his part, and he believes doing so reflects good judgment. He noted that he has never had an arrest for drunk driving or for alcohol-related incident; he's been married for more than 30 years; and he's lived in the same home for a quarter of a century, all of which shows he lives a stable life.

Other than Applicant's admissions to the SOR, the evidence is limited to the information he self-reported in his February 2014 security clearance application.<sup>6</sup> Neither Department Counsel nor Applicant submitted any other documentary information in support of their case. The information he self-reported about his history of treatment for excessive use of alcohol largely supports the SOR allegations. There is no evidence concerning who (e.g., a physician, clinical psychologist, or licensed clinical social worker) made the diagnosis of alcohol dependence as well as no evidence of what was the factual basis for the diagnosis. Likewise, there is no evidence of Applicant's involvement in an alcohol-related incident at work or away from work; there is no evidence that he has a police record of any kind; and there is no evidence of financial problems related to excessive use of alcohol.

### **Law and Policies**

It is well-established law that no one has a right to a security clearance.<sup>7</sup> 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>8</sup> Under *Egan*, Executive Order 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.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>9</sup> An

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<sup>6</sup> Exhibit 4 at 37, 40–43.

<sup>7</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>8</sup> 484 U.S. at 531.

<sup>9</sup> Directive, ¶ 3.2.

unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>10</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>11</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>12</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>13</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>14</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>15</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>16</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>17</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

## Discussion

Under Guideline G for alcohol consumption,<sup>18</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive use of alcohol, because such use often leads to the exercise of questionable judgment or the

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<sup>10</sup> Directive, ¶ 3.2.

<sup>11</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>12</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>13</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>14</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>15</sup> *Egan*, 484 U.S. at 531.

<sup>16</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>17</sup> Executive Order 10865, § 7.

<sup>18</sup> AG ¶¶ 21, 22, and 23 (setting forth the concern and the disqualifying and mitigating conditions).

failure to control impulses, which can raise questions about a person's reliability and trustworthiness.

In analyzing the written record, I have considered the disqualifying conditions set forth in AG ¶¶ 22(c), (d), (e), and (f). Likewise, I have considered the mitigating conditions set forth in AG ¶¶ 23(b) and (d). Having done so, I conclude the evidence supports a conclusion that Applicant has a problematic history of excessive use of alcohol sufficient to raise a concern about his fitness or suitability for access to classified information. I further conclude that Applicant has not met his burden to present persuasive evidence of reform and rehabilitation to mitigate the concern. Other than the one-page memorandum in answer to the SOR, he presented no documentation in support of his case. What is missing here is important information showing that Applicant's past excessive use of alcohol is not a current problem. For example, he could have presented a recent evaluation, opinion, and favorable prognosis by a qualified professional. Given the state of the written record, I am unable to reach a favorable decision for Applicant.

The concern over Applicant's problematic history of excessive use of alcohol creates doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.<sup>19</sup> Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.c:	Against Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information.

Michael H. Leonard  
Administrative Judge

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<sup>19</sup> AG ¶ 2(a)(1)–(9).