



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



In the matter of:

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) ISCR Case No. 15-01569  
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Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

09/20/2016

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant was arrested and charged with four alcohol-related criminal offenses between the early 1990s and 2013. He was found to be severely intoxicated at work in 2011. He relapsed following his completion of intensive outpatient alcohol treatment programs in both 2010 and 2011. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on November 6, 2007, and was subsequently granted a clearance for the first time in connection with his current employment.<sup>1</sup> On September 30, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR)

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<sup>1</sup>Item 3.

to Applicant, detailing security concerns under Guideline G (Alcohol Consumption).<sup>2</sup> 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on November 7, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on January 26, 2016. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was received by Applicant on February 3, 2016, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted additional documents in response to the FORM during the time provided, to which Department Counsel had no objection. They are admitted into evidence as Applicant's Exhibit (AE) A. Applicant did not object to the admissibility of any Item attached to the FORM. Items 1 through 5 and Item 7 are admitted into evidence.<sup>5</sup> I received the case assignment on April 22, 2016.

### **Findings of Fact**

Applicant is 45 years old. He has worked for a major defense contractor since 2002. He attended college from 1993 to 1995. He never served in the military. He has held a security clearance during his current employment since 2008. He has never married, and had one adult child.<sup>6</sup>

In his response to the SOR, Applicant admitted all of the allegations in SOR ¶¶ 1.a through 1.g, with some explanations. Applicant's admissions and explanations are incorporated in the following findings.<sup>7</sup>

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<sup>2</sup>Item 1.

<sup>3</sup>Item 2.

<sup>4</sup>Department Counsel submitted seven Items in support of the SOR allegations. Item 6 is the summary of an interview from an OPM Report of Investigation. It was neither attested to nor adopted by Applicant, and no witness authenticated the document. Accordingly, it is inadmissible per Directive ¶ E3.1.20 and will not be considered in determining Applicant's eligibility for a security clearance. There is no information in Item 6 that would reasonably support mitigation of security concerns raised by the facts alleged in the SOR, and any relevant adverse information in Item 6 is cumulative with information contained in Items 1 through 5 and Item 7.

<sup>5</sup>See footnote 4, above, concerning the irrelevance and inadmissibility of Item 6.

<sup>6</sup>Item 2.

<sup>7</sup>Item 2.

On two different occasions in the early 1990's, Applicant was arrested and charged with Public Intoxication.<sup>8</sup> In 1998 he was convicted of Driving While Intoxicated (DWI), and sentenced to serve probation and perform community service.<sup>9</sup>

Applicant entered an intensive outpatient treatment program at a local hospital for alcohol dependence in October 2010. He then abstained from alcohol consumption until February 2011 when he relapsed and resumed alcohol consumption.<sup>10</sup>

On September 21, 2011, Applicant tripped and fell in his work area. The coworker who came to his assistance smelled alcohol and called security personnel, who responded with medical assistance. The responders also detected alcohol on his breath, and subsequent tests revealed that Applicant had blood alcohol content (BAC) levels of .274 and .28. He was then referred to, and required to participate in, his company's Employee Assistance Program (EAP) for substance abuse, and to perform random testing for two years.<sup>11</sup>

As required by the EAP, Applicant underwent another period of intensive outpatient treatment at the same local hospital from October 3, to November 11, 2011. During that program he was diagnosed, by a staff licensed clinical social worker, as being alcohol dependent. He enrolled and participated in Alcoholics Anonymous (AA), and was advised to continue that program and abstain from alcohol consumption upon his discharge from outpatient treatment.<sup>12</sup>

Applicant was arrested and charged with DWI again in 2013. On December 29, 2014, he stated in a sworn interrogatory response that he was not participating in AA, or a similar organization, to help him abstain from drinking. He further stated that he had last consumed alcohol on August 21, 2014, but no longer drank alcohol and did not intend to do so in the future.<sup>13</sup> In his response to the SOR, he said that the date of his last alcohol consumption was in September 2014.<sup>14</sup>

Applicant said that he was not participating in AA, or receiving other counseling for his issues with alcohol, because he found those methods for recovery were not right for him. He said that, instead, he has been attending his church on a regular basis, and participating in its governance, for more than two years to help him recover and abstain

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<sup>8</sup>Item 1; Item 2.

<sup>9</sup>Item 1; Item 2; Item 3; Item 4.

<sup>10</sup>Item 1; Item 2; Item 4; Item 7 at 16, 23.

<sup>11</sup>Item 5.

<sup>12</sup>Item 5; Item 7.

<sup>13</sup>Item 4. He admitted the 2013 DWI in this response, but the record contains no further details about it.

<sup>14</sup>Item 2.

from alcohol. His pastor wrote a letter describing their two families' close connections over the past thirteen years. Their daughters are close friends, and the pastor trusted Applicant to care for his daughter when she would accompany Applicant's family over those years. The pastor also confirmed Applicant's recent involvement in church activities.<sup>15</sup>

The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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<sup>15</sup>AE A.

A person applying for access to classified information seeks to enter 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 or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the allegations in the SOR and record evidence are:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(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

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

Applicant has been arrested and charged with multiple incidents of public intoxication and DWI since the early 1990s. He was also found to be severely intoxicated at work in September 2011. He underwent and completed intensive outpatient treatment for his alcoholism in October 2010, and again from October to November 2011 following his first post-treatment relapse in February 2011. He failed to follow his counselor's recommendation to continue AA participation after his 2011

outpatient treatment, and was charged with another DWI in 2013. These incidents raise significant security concerns under AG ¶¶ 22(a), (b), (e), and (f).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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;

(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);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(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 in accordance 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.

Applicant has a lengthy history of alcohol-related offenses, leading to a series of criminal charges under circumstances demonstrating bad judgment. His latest documented incident was in 2013, following his second period of intensive outpatient treatment. Given this pattern, his relapses after completion of two treatment programs, and his decision not to continue participation in AA or a similar aftercare program, it cannot be determined that recurrence is unlikely or that doubts concerning his judgment and reliability are resolved. Applicant failed to meet his burden to establish mitigation under AG ¶ 20(a).

Applicant says that he has abstained from alcohol consumption since August or September 2014. However, this current period of abstinence follows multiple relapses after completing two previous intensive outpatient treatment programs, and is most likely connected to some level of monitoring following his 2013 DWI charge. Accordingly, Applicant failed to establish mitigation under the terms of AG ¶¶ 23 (b), (c), or (d).

## **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 pertinent facts and circumstances surrounding this case. Applicant did not take the opportunity to introduce evidence of his good character, reliability, or trustworthiness, other than a letter from his pastor describing their families' friendship and Applicant's recent participation in their church. He is a mature individual who is accountable for his choices and actions. His history of alcohol-related misconduct dates back more than 20 years. Although he claims abstinence since August or September 2014, his latest DUI is too recent, and his post-treatment relapses are too numerous, to conclude that recurrence of alcohol abuse is unlikely. Overall, the record evidence creates significant doubt as to Applicant's present eligibility and suitability for a security clearance, and such doubt must be resolved in favor of the national security. Although Applicant has begun to establish a recent record of responsible conduct, he did not meet his burden to mitigate the security concerns arising from his alcohol consumption.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                      **AGAINST APPLICANT**

Subparagraphs 1.a through 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge