



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



In the matter of: )  
)  
) ISCR Case No. 15-02659  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

02/14/2017  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct and alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 15, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct), F (financial considerations), and G (alcohol consumption). 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 February 10, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August

19, 2016, scheduling the hearing for October 4, 2016. The hearing was postponed and convened as rescheduled on November 14, 2016. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on November 29, 2016.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since 2008. He served on active duty in the U.S. military from 2000 until he received a general under honorable conditions discharge in 2008. He attended college for a period without earning a degree. He is married for the second time. He has a minor child and three adult stepchildren.<sup>1</sup>

Applicant has a history of criminal conduct, predominantly alcohol related. He was arrested in 1999 and charged with driving under the influence of alcohol (DUI) and other alcohol-related charges. He pleaded guilty and was sentenced to community service and a fine. He was arrested twice between 2006 and 2008 and charged with DUI. He was convicted of the first offense and sentenced to five days in jail, a fine, and probation for five years. The second arrest also included a charge of driving on a suspended or revoked license for a DUI. He was sentenced to three months in jail, a fine, and probation for five years.<sup>2</sup>

Applicant received alcohol treatment in 2007 and 2008. He was diagnosed as being alcohol dependent. The credentials of the person making the diagnosis are unknown, as are other details surrounding the diagnosis.<sup>3</sup>

Applicant was arrested in 2009 and charged with hit-and-run and driving on a suspended or revoked license for a DUI. He was sentenced to a month in jail, a fine, and probation for three years. Applicant stated that he was not drinking, but his license was suspended from his DUIs, and he panicked.<sup>4</sup>

Applicant was arrested in August 2012 and charged with battery (domestic violence). Applicant stated that he was innocent of the offense, and the charge was dismissed.<sup>5</sup>

Applicant stated that his drinking increased after he returned from deployments to Qatar and Iraq. He was sober for two and a half years after he was released from jail

---

<sup>1</sup> Tr. at 19, 47-48; GE 1, 2.

<sup>2</sup> Tr. at 19, 36-38; Applicant's response to SOR; GE 1-3.

<sup>3</sup> Tr. at 30-31, 38-40; Applicant's response to SOR; GE 1, 2.

<sup>4</sup> Tr. at 19, 41-42; Applicant's response to SOR; GE 1-3.

<sup>5</sup> Tr. at 43-46; Applicant's response to SOR; GE 1-3.

in 2010. He believes that his alcohol issues are tied to his depression. He testified that he had a doctor's appointment and he was hoping to be placed back on antidepressants. He testified that he currently drinks responsibly, and that the third DUI was the last time he drank before driving. He estimated that he drinks about two to three beers, four nights a week, and about six to eight beers on the weekend.<sup>6</sup>

Applicant's legal proceedings, which included fines and attorneys' fees, caused financial problems. The SOR alleges eight delinquent debts totaling about \$12,600. The majority of the debts have been paid, settled, or otherwise resolved. Applicant has attempted to resolve any remaining debts. His current financial situation is sound.<sup>7</sup>

Applicant submitted a letter attesting to his strong moral character, excellent job performance, expertise, work ethic, responsibility, and trustworthiness.<sup>8</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.

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.

---

<sup>6</sup> Tr. at 18, 28-35, 40-41, 46, 48; Applicant's response to SOR; GE 2.

<sup>7</sup> Tr. at 21-28, 44; Applicant's response to SOR; GE 1, 2, 4-7; AE B-E.

<sup>8</sup> AE A.

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 G, Alcohol Consumption**

The security concern for alcohol consumption 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 guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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;
- (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;<sup>9</sup>
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

---

<sup>9</sup> The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) contained the criteria for alcohol dependence and alcohol abuse. The DSM-IV-TR has been replaced by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), which was published in May 2013. The DSM-5 did not include alcohol dependence and alcohol abuse disorders, and replaced them with alcohol use disorder, with severity levels of mild, moderate, and severe.

(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 three DUIs, most recently in 2007 or 2008. He received treatment in 2007 and 2008, where he was apparently diagnosed as alcohol dependent. The credentials of the person making the diagnosis are unknown, as are other details surrounding the diagnosis. AG §§ 22(a) and 22(c) are applicable. The remaining disqualifying conditions, as specifically worded, are not applicable. However, the general concerns raised by Applicant's continuing to drink after an alcohol-dependence diagnosis and attending alcohol treatment are present.

Conditions that could mitigate alcohol consumption security concerns are provided under AG § 23. The following are potentially applicable:

(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); 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's last DUI was more than nine years ago. He testified that he currently drinks responsibly, and that the third DUI was the last time he drank before driving. He estimated that he currently drinks about two to three beers, four nights a week, and about six to eight beers on the weekend. Applicant is commended for avoiding further alcohol-related criminal charges. However, he exhibited extremely poor judgment on multiple occasions, and I am not convinced that he has his alcohol use under control. His alcohol consumption and alcohol-related criminal conduct continue to cast doubt on his reliability, trustworthiness, and good judgment. There are no mitigating conditions sufficiently applicable to dispel security concerns about Applicant's alcohol use.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's alcohol abuse and criminal conduct reflect questionable judgment and an unwillingness to comply with rules and regulations. The conduct also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. 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

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

I accept Applicant's statements that he was innocent of the domestic violence charge. AG ¶ 17(f) is applicable to SOR ¶ 2.b. The analysis above under alcohol consumption is also appropriate here, except there are additional personal conduct matters that are not alcohol related. Applicant showed significant disregard for the law when he chose to drive on multiple occasions when his driver's license was suspended. Fear of getting caught while driving on a suspended license caused him to leave the scene of an accident. Personal conduct security concerns are not mitigated.

#### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant was unable or unwilling to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The majority of Applicant's debts have been paid, settled, or otherwise resolved. He has attempted to resolve any remaining debts. His current financial situation is sound. The above mitigating conditions are applicable.

### **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 E, F, and G in my whole-person analysis.

I considered Applicant's military service and particularly his deployments. However, concerns remain about his alcohol use and his disregard for the law.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct and alcohol consumption 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:	Against Applicant
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline F:	For Applicant
Subparagraphs 3.a-3.h:	For 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.

---

Edward W. Loughran  
Administrative Judge