



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03976

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel

For Applicant: *Pro se*

12/02/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the alcohol consumption security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 11, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline 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 April 13, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 11, 2016, scheduling the hearing for September 22, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1, 2, and 4 through 7 were admitted in

evidence without objection. The objection to GE 3 was sustained. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on October 3, 2016.

### **Findings of Fact**

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer since 2006. He seeks to retain a security clearance, which he has held since about 2006. He has a bachelor's degree that was awarded in 1999. He is divorced with no children.<sup>1</sup>

Applicant has a history of alcohol-related conduct. He was arrested in 1993 and charged with public intoxication. He stated that "the judge agreed that [he] was wrongfully arrested and the case was dismissed." He was arrested again in 1994 and charged with public intoxication.<sup>2</sup>

Applicant was arrested in 2004 and charged with driving while intoxicated (DWI) and obstructing highway passageway. He stated that he "had not been drinking heavily that evening, but refused the officer's breathalyzer test and was therefore arrested." He pleaded guilty to obstructing highway passageway.<sup>3</sup>

Applicant was cited in 2005 with having an open container. He stated that he was the designated driver in a friend's vehicle. The friend had the open container, but they both were cited. Applicant received a deferred adjudication.<sup>4</sup>

Applicant was arrested in 2008 and charged with DWI and obstructing highway passageway. He stated that he "had not been drinking heavily that evening, but refused the officer's breathalyzer test and was therefore arrested." He pleaded guilty pursuant to a deferred adjudication to obstructing highway passageway. He was sentenced to a \$400 fine, \$268 in fees, and probation for a year.<sup>5</sup>

Applicant was arrested in May 2010 and charged with DWI and obstructing highway passageway. He pleaded guilty to DWI. He was sentenced to a \$750 fine, \$383 in fees, 180 days in jail, and probation for a year. He was given the choice of confinement or paying the fine. He completed the terms of his probation.<sup>6</sup>

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<sup>1</sup> Tr. at 50; GE 1, 2.

<sup>2</sup> Tr. at 24-25; Applicant's response to SOR.

<sup>3</sup> Tr. at 27-30; Applicant's response to SOR; GE 6.

<sup>4</sup> Tr. at 30-32; Applicant's response to SOR.

<sup>5</sup> Tr. at 17-19, 25-26, 33-40; Applicant's response to SOR; GE 4-6.

<sup>6</sup> Tr. at 40-45; Applicant's response to SOR; GE 4-6.

Applicant has not been arrested for anything since his 2010 arrest. He reported his arrests to his security officer, who reported them to the DOD via the Joint Personnel Adjudication System (JPAS). He is remorseful for his actions, and he stopped drinking alcohol about a year ago. He stated that he has gotten older and matured. He has a girlfriend with a young child, and he does not want to risk his career by abusing alcohol.<sup>7</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.

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.

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<sup>7</sup> Tr. at 16-17, 20-23, 47-48, 51-53; Applicant's response to SOR; GE 4, 7.

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; and
- (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.

Applicant has several alcohol-related arrests. He drank alcohol to excess and to the point of intoxication. The above disqualifying conditions are applicable.

The evidence does not substantiate the facts alleged in SOR ¶¶ 1.a and 1.d. Those allegations are concluded for Applicant.

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; and
- (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).

Applicant's last alcohol-related arrest was in May 2010, more than six years ago. He reported his arrests to his security officer, who reported them to the DOD via JPAS. He is remorseful for his actions, and he stopped drinking alcohol about a year ago. He has a girlfriend with a young child, and he does not want to risk his career by abusing alcohol.

I find that Applicant has established a pattern of abstinence and that uncontrolled drinking is unlikely to recur. His alcohol-related criminal activity no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(b) 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 Guideline G in my whole-person analysis.

Applicant exhibited extremely poor judgment when he drove on three occasions after drinking. However, I am satisfied that he finally learned his lesson, and the conduct will not be repeated.

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 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:	For Applicant
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Subparagraphs 1.a-1.h:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge