



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-03979  
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Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

04/17/2017

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the alcohol consumption or personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 4, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and E (personal conduct). 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 March 28, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 9, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 16, 2016. On June 10, 2016, Applicant responded with a two page letter containing eight objections to various statements made in the FORM. I

have marked this two page letter as Applicant Exhibit (AE A) A. The case was assigned to me on March 20, 2017. The Government exhibits identified as Items 1 through 4 included in the FORM are admitted in evidence. AE A is also admitted into evidence without objection.<sup>1</sup>

### **Findings of Fact**

Applicant is a 60-year-old employee of a defense contractor. He has worked for his current employer since 2013. He served honorably in the Air Force from 1979 to 1988. He held previous security clearances while he was in the Air Force. He was divorced in 2008 after 30 years of marriage, and he re-married in September 2012.<sup>2</sup> Applicant obtained his bachelor's degree in 1978, and two masters degrees in 1981 and 1984.

Applicant was diagnosed as alcohol dependent in July 2011.<sup>3</sup> He first entered treatment in February 2011. The precipitating event to his treatment was a fall causing facial injuries and family intervention.<sup>4</sup> He suffered a relapse in May 2011; again in October 2011; and again in September 2014.<sup>5</sup> In February 2011, Applicant was asked by his family members to seek counseling or treatment as a result of his use of alcohol.<sup>6</sup> Applicant received treatment for alcohol dependence at a treatment center in February 2011 for 21 days; in May 2011 for 17 days; and, again from July 2, 2011 to July 19, 2011.<sup>7</sup> He also attended daily Alcoholic's Anonymous meetings and participated in the 12 step program.

Applicant claims that he became depressed in early 2011 when his federal contractor employer lost a dream contract with NASA. On his last day on the job there, Applicant fell down and "cracked open his forehead."<sup>8</sup> Subsequent tests at the hospital determined that Applicant had liver problems. He fell again in his elderly mother's kitchen in Mashpee, MA around May 2011, after drinking. He was re-admitted to the treatment center and completed 15 more days of treatment in May 2011.<sup>9</sup> Applicant

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<sup>1</sup> Two page response to FORM dated June 10, 2016.

<sup>2</sup> Item 2.

<sup>3</sup> Item 4, discharge summary from a Treatment Center, on Cape Cod, and discharge diagnosis by Counselor George Gritzbach, licensed mental health counselor.

<sup>4</sup> Item 4.

<sup>5</sup> Item 1, Answer to SOR.

<sup>6</sup> Item 2, at page 40.

<sup>7</sup> Items 3 and 4.

<sup>8</sup> Item 3, summary of subject interview on January 8, 2014, at p. 4.

<sup>9</sup> Item 3, summary of subject interview on January 8, 2014, at p. 5.

next relapsed and drank again in October 2011.<sup>10</sup> Applicant then remained sober from October 2011 until September 2014.

Applicant moved south to a different state in August 2014 for a job. He was separated from his wife and he was lonely. While watching football, he consumed half of a nine pack of beer during the weekend of September 13 and 14, 2014.<sup>11</sup> He consumed the remainder of that nine pack during the following weekend of September 20 and 21, 2014. Applicant did not tell his wife about this relapse. He also didn't tell the Office of Personnel Management investigator who interviewed Applicant on September 17, 2014, about his beer drinking a few days earlier. Indeed Applicant told the investigator that he last drank alcohol in October 2011.<sup>12</sup> Applicant claims to no longer consume alcohol, and he has no intent to drink it in the future.<sup>13</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,

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<sup>10</sup> Item 3, summary of subject interview on September 17, 2014, at p. 4.

<sup>10</sup> Item 3, summary of subject interview on September 24, 2014, at p. 2.

<sup>11</sup> Item 3, summary of subject interview on September 17, 2014, at p. 4.

<sup>12</sup> Item 3, summary of subject interview on September 17, 2014, at p. 4.

<sup>13</sup> Item 3, Answers to Interrogatories.

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 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 is 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;
- (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 relapsed at least twice since completing treatment and being diagnosed as alcohol dependent in July 2011. Although Applicant has abstained for some time now, and he has taken measures to address his disease, his last relapse was in September 2014. His period of abstinence is insufficient to find that he has fully

recovered, although we have every hope that he will do so. ¶ AG 22(e) and AG 22 (f) are applicable.

AG ¶ 23 provides conditions that could mitigate security concerns. 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 alcohol-related problems are longstanding, and he has required family and emergency medical intervention, as well as treatment. Nonetheless, he has relapsed repeatedly. To his great credit, Applicant has acknowledged his issues of alcohol abuse, completed treatments, and claims to now be abstinent. Yet, it is premature to conclude that a relapse is unlikely to recur and that Applicant has demonstrated a sustained duration of abstinence. It is Applicant's burden to establish any mitigating conditions. He did not do so. 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:

(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Since Applicant denied any intent to provide false information in his response to an interrogatory, SOR ¶ 2.a, his intent is an issue. Pursuant to ¶ E3.1.14 of DOD Directive 5220.6, the Government is responsible for presenting witnesses and evidence on facts alleged in the SOR that have been controverted. Intent can be inferred or determined from the circumstances. Applicant responded negatively when asked in the interrogatory if he had ever been diagnosed as alcohol dependent. Since he broached his alcoholism in his SCA, and discussed it further in the answers to interrogatories and subject interviews, it hardly seems likely that he was attempting to deceive. I accept Applicant's explanation that he was unaware of the term "alcohol dependent" ever being used during his in-patient treatments.<sup>14</sup> Applicant did not have his medical records, when he answered the interrogatory. Applicant might have inquired further, but didn't. While this lack of due diligence may have been negligent, it does not show the specific intent necessary to find deliberate falsification of the response to interrogatory.

Conversely, SOR ¶ 2.b alleges that Applicant failed to disclose his September 2014 alcohol relapse to an authorized investigator for the Department of Defense during his September 17, 2014 interview. By his own admissions, in a later subject interview on September 24, 2014, Applicant stated that he relapsed and drank several beers on the weekend of September 13 – 14, 2014. Thus, his assertion that he last drank alcohol in October 2011, to the OPM investigator one week earlier, was a deliberate falsehood.

Since he was living apart from his wife, when he relapsed in Virginia in September 2014, she did not know immediately about his most recent relapse. However, she was fully aware of his alcoholism already. Thus, I find that SOR ¶ 2.c is inapposite. While he may have delayed informing his spouse about the relapse, that does not constitute a disqualifying condition under AG E, in and of itself.

### **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):

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<sup>14</sup> Item 1, Answer to SOR.

(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 and G in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraphs 2.a and 2.c:	For Applicant
Subparagraph 2.b:	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.

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Robert J. Kilmartin  
Administrative Judge