



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-05851  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2017  
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**Decision**  
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KILMARTIN, Robert J., Administrative Judge:

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

**Statement of the Case**

On February 8, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J (criminal conduct) 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 March 8, 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 April 12, 2016. The Government exhibits identified as Items 1 through 4 included in the FORM are admitted into evidence, absent objection. 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 April 22, 2016. On May 5, 2016, Applicant responded with a two-page email and six pages of documentation. These are collectively marked as Applicant's Exhibit A (AE A) and admitted into evidence.<sup>1</sup>

### **Findings of Fact**

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since September 2014. He graduated from high school in 1997 and took some courses at a community college. He reports no military service and he has been married since July 2014.<sup>2</sup>

Applicant disclosed a 1993 citation for being a minor in possession of alcohol in his Questionnaire for National Security Positions/ Security Clearance Application (SCA) that he signed in October 2014. Applicant was attending a friend's house party where alcohol was served when the police showed up. Along with several others, he was cited for being a minor in possession of alcohol and given a ticket. He did not have to go to court, but paid a fine of approximately \$100.<sup>3</sup> It is not clear whether Applicant possessed or ingested alcohol at that time, or was merely found in the presence of alcohol.<sup>4</sup> In any event, he was 14 years old. This incident won't be considered except to say it is mitigated.

In August 2000, Applicant was charged with felony assault, after drinking a few beers.<sup>5</sup> He shared about five beers with a friend who then provoked a fight with some young men passing by. Applicant got involved in a wrestling skirmish with one of the young men, and he was subsequently arrested. He was not cited for alcohol or public intoxication, or given a breath or blood test.<sup>6</sup> Instead, he was charged with felony assault because the police initially perceived the fight to be a hate crime. Applicant spent 13 days in jail before he was arraigned. Applicant's attorney had the charge reduced to assault 4, a misdemeanor, and the court granted Applicant a deferred prosecution.<sup>7</sup> This meant that if Applicant met the court imposed conditions including probation for one year, time served, and paid the fines, the charge would be dismissed after one year. The charge was dismissed. There is no evidence of any causal

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<sup>1</sup> Six pages of documents attached including: a one page Final Report of Deferred Prosecution reflecting treatment completed on November 12, 2015; a one page letter from district court stating that Applicant successfully completed his two year treatment program in late 2015, and his probation in January 2016; and several pages of illegible slips purporting to show Applicant's weekly attendance at AA meetings.

<sup>2</sup> Item 1.

<sup>3</sup> Item 3, at page 11.

<sup>4</sup> Item 3, at page 11.

<sup>5</sup> Item 3, at page 15.

<sup>6</sup> Item 3, at page 15.

<sup>7</sup> Item 3, at page 16.

connection between Applicant's ingestion of a few beers and the ensuing wrestling match. Applicant mitigated this incident which occurred 17 years ago when he was 21.

In December 2006, Applicant was arrested for driving under the influence (DUI). He consumed about eight drinks in the four-hour period before his arrest.<sup>8</sup> He was ordered by the court to have an alcohol assessment. Subsequently, he was ordered to attend an eight-hour alcohol education class. He was sentenced in April 2007 to a fine of \$1,000, court costs, license suspended three months, followed by mandatory use of an ignition interlock device.<sup>9</sup> Applicant complied with all of the court-ordered conditions and the charge was reduced to negligent driving.<sup>10</sup> This was an alcohol-related event but not necessarily criminal behavior. It should have been a wake-up call to Applicant.

Applicant was arrested again for DUI in May 2013. He claims that he had five or six alcohol drinks in the two hours before he sat down behind the wheel.<sup>11</sup> Applicant had another alcohol assessment and was recommended to attend outpatient treatment. The court again granted a deferred prosecution on the following conditions: 40 days jail time suspended; supervised probation for two years; license suspended for two years, ignition interlock device, fines, court costs, and whatever treatment was recommended by his alcohol assessment.<sup>12</sup> Applicant complied with all of the conditions, and has not consumed any alcohol since this incident.<sup>13</sup> He attended AA meetings and completed two years of out-patient treatment, as evidenced by the documents attached to his Response to the FORM.

## **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

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<sup>8</sup> Item 3, at page 10.

<sup>9</sup> Item 3, at page 10.

<sup>10</sup> Item 3, at page 11.

<sup>11</sup> Item 3, at page 9.

<sup>12</sup> Item 3 at page 10.

<sup>13</sup> Item 3, page 10.

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.

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; 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 two alcohol-related incidents, the DUI arrest in December 2006, and the DUI arrest in May 2013. Applicant disclosed these transgressions in his SCA and he has admitted them in his Answer to the SOR. AG ¶¶ 22(a) and 22(c) 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 last alcohol-related incident was in May 2013. He has completed treatment, attends AA meetings, and committed himself to a life of sobriety.<sup>14</sup> An inference can be drawn that Applicant has confronted his condition, and he is coping with his affliction. Applicant has met his burden in establishing that sufficient time has elapsed since his last alcohol-related event, and he has taken responsible measures to insure that it never happens again. The above-mentioned mitigating conditions apply to dispel security concerns about Applicant's future alcohol use.

## **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30.

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<sup>14</sup> AE A.

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes conditions that could raise security concerns under AG ¶ 31. The disqualifying conditions potentially applicable in this case include:

31(a) a single serious crime or multiple lesser offenses; and,

31(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has admitted to two arrests for DUI within the last 11 years, and the street brawl when he was 21 years old. Although Applicant hired an attorney in each case, and obtained deferred prosecutions and ultimate dismissal of charges, the above disqualifying conditions are applicable.

AG ¶ 32 provides conditions that could mitigate security concerns. The following are potentially applicable:

32(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and,

32(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has not been involved in any criminal activities since his 2013 arrest. His interaction with the criminal justice system has virtually always involved alcohol. He has now confronted his alcohol problem, and completed treatment including attendance at AA meetings. His employment with a defense contractor is a sign of rehabilitation. He is credited with divulging his actions on the SF 86 and during his background interview. The district court and probation department documents attached to his Response to the FORM, corroborate his commitment to sobriety. This and the passage of time since that last arrest leave me with no doubt that Applicant is ready to be entrusted with access to classified information. I find that Applicant's alcohol involvement and criminal conduct security concerns have been mitigated and that AG ¶¶32(a) and 32(d) apply.

### **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 G and J in this whole-person analysis.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the alcohol consumption and criminal conduct 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
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline J:	For Applicant
Subparagraphs 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

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Robert J. Kilmartin  
Administrative Judge