



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



In the matter of:

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) ISCR Case No. 15-07811  
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Applicant for Security Clearance

**Appearances**

For Government: Aubrey De Angelis, Department Counsel  
For Applicant: *Pro se*

January 17, 2017

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated July 3, 2014. (Government Exhibit 1.) On May 10, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G for Applicant. 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 6, 2016, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on August 8, 2016. A notice of hearing was issued on August 30, 2016, scheduling the hearing for October 12, 2016. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were received without objection. The Applicant presented five exhibits at the hearing, referred to as Applicant's Exhibits A through E, which were admitted without objection. Applicant also testified on his own behalf. The transcript of the hearing (Tr.) was received on October

21, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 54 years old, and divorced with two children. He has a Bachelor's of Science degree in Electronic Engineering. He is employed by a defense contractor as a Section Manager and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that Applicant is ineligible for clearance because he abuses intoxicants.

Applicant admitted both of the allegations set forth in the SOR. (Applicant's Answer to SOR.) He started consuming alcohol at the age of 21, while in community college. At that time, he drank beer socially on the weekends with friends. He normally averaged about six beers over the course of a weekend. Applicant states that he would normally not drink to the point of intoxication, nor would he drive a vehicle after consuming alcohol. He states that he has maintained this level of consumption to the present. (Government Exhibit 3.) Applicant has worked for his current employer, moving through company transitions, and interrupted by several lay-offs, for about 28 years. He has held a security clearance most of that time without incident.

In 2009, Applicant and his wife separated, and to fill his time, he consumed alcohol, about once or twice during the mid-week at a bar. On these occasions he drank to the point of intoxication, consuming three or four beers. (Tr. pp. 35-36.) Applicant explained that he never drank alcohol at home alone. He was never a daily drinker, but described himself as more of a "binge drinker." (Tr. p. 43.) Applicant went to the bar in the evenings once or twice a week and on the weekends to avoid loneliness. He consumed alcohol at the bar as a social thing, where he met people, and watched sporting events on television.

On August 19, 2010, Applicant was arrested and charged with, among other things, Driving Under the Influence of Alcohol. He explained that in August 2010, he was still recovering from a ski injury in March 2010, where he broke his leg. He had been bedridden at home for months with his leg elevated and in a wheel chair while at work. On the day in question, his foot had been removed from the cast, and he was able to walk and drive. Applicant explained that went alone to the bar where people were happy to see him. At the bar, he consumed six beers in a three hour time frame. He decided to drive home because he felt he was sober enough to do so. On his way home, he was pulled over by a police officer who saw him cross over the center divider with his vehicle. Applicant was given a field sobriety test and failed. He was then administered a breathalyzer test, and blew over the legal limit. After being taken to jail, Applicant blew a .12 putting him over the legal limit again. Applicant was held in jail over night. He pled nolo contendere to the DUI charge, and was found guilty. He was fined \$390; required to attend a 6 month alcohol awareness classes; attend 6 Alcoholics Anonymous (AA)

meetings; and 1 Mother's Against Drunk Driver's class. (Government Exhibits 4 and 7.) Applicant satisfied all of the courts sentencing requirements imposed as a result of this DUI.

Following this arrest Applicant stopped consuming alcohol for about six to eight months. (Tr. p. 37.) He then returned to socializing at the one particular bar he frequented. He met friends there, and returned to consuming alcohol.

On January 27, 2015, Applicant went to the bar to watch a basketball game. He explained that on that day he was told that he was being promoted on the job to Section Manager. He told his friends at the bar, and to celebrate, they bought him drinks. (Tr. p. 47.) Applicant consumed about six or seven beers before driving that night. (Tr. p. 48.) Applicant was pulled over by the police, and arrested and charged, among other things, for Driving Under the Influence of Alcohol. This time, Applicant spent 4 days in jail. He pled nolo contendere to the DUI charge, and was found guilty. He was sentenced to 4 years probation, 5 days in jail, 241 hours of community service, an 18-month licensed second offender alcohol and drug education and counseling program, and fined \$2,488. (Government Exhibit 6.)

Applicant states that he is highly motivated to follow all court orders related to his second DUI. At the present time he completed the 18-month substance abuse treatment program and driver benefits program on July 21, 2016. He has completed his 5 day jail sentence. He has also completed the superior court hospital and morgue program classes. (Applicant's Exhibit C.) Applicant remains on probation for this offense until April 3, 2018. He has installed the state DMV required ignition interlocking devices on both of his vehicles. (Applicant's Exhibit D.) He still owes the court a total of \$2,388 in fines, assessments, and costs. He has also volunteered to take random urinalysis tests on his own time and at his own expense. Applicant states that he has not consumed alcohol since his DUI arrest in 2015.

Applicant does not believe that he is an alcoholic. He admits that he is a binge drinker, but not an alcoholic. (Tr. p. 51.) A letter from the alcohol awareness course that Applicant is currently attending characterizes the Applicant as a "self-admitted alcoholic relating traditional symptoms of alcoholism, including loss of control over intake once drinking commenced." (Applicant's Exhibit B.) Other than the court ordered programs and Alcoholic Anonymous meetings, individual counseling and group counseling, Applicant attended nothing further than that required by the court, except some additional AA meetings. He has not worked any of the twelve steps nor does he have a sponsor. (Tr. pp. 54-55.)

Applicant states that he no longer goes out to the bars to socialize. He tries to find friends thorough social media, by surfing the internet. He also hikes and rides his motorcycle where he meets people. He has thought about working the steps of AA but has not started yet. (Tr. p. 57.)

Applicant has received a number of accolades for his stellar performance on the job. In 2012, he was selected to receive a noteworthy Certificate of Appreciation. In

2013, he was recognized for exceptional performance and achievement. In 2014, he worked an additional 734 hours above a normal 40-hour work week. In 2015, he worked an additional 425 hours above a normal 40-hour work week to meet program requirements, and was promoted to Engineering Section Manager. (Applicant's Exhibits A and E.)

Applicant's performance reviews for the years 2014 and 2015 reflect the highest possible rating of 5, which indicates that Applicant "significantly exceeds expectations." Applicant is described as an excellent performer. (Applicant's Exhibit E.)

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive set forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline G (Alcohol Consumption)

21. *The Concern.* 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.

#### Conditions that could raise a security concern:

22.(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;

22.(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.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the administrative judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;

- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The administrative judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any 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."

## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an applicant for clearance may be involved in alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the

burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving that Applicant has an alcohol abuse problem (Guideline G). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline G of the SOR.

From the evidence presented, Applicant is an alcoholic who is a binge drinker. Although there is no evidence that he has been formally diagnosed, there is sufficient evidence in the record that leads one to believe that it is a strong possibility. Since the age of 21, Applicant has abused alcohol on a regular and consistent basis, and has been arrested for DUI on two occasions within the past six years. His most recent arrest occurred in January 2015. Although he has been working diligently to complete the court-ordered program related to his conviction, and has been characterized by the alcohol treatment program as a "self-admitted alcoholic," he has not sought out any further help for his condition. He remains in denial, and does not believe he is an alcoholic. (Tr. p. 51.) Under Guideline G, Alcohol Consumption, Disqualifying Conditions 22.(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 22.(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* apply. None of the mitigating conditions are applicable. Accordingly, I find against Applicant under Guideline G, Alcohol Consumption.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Applicant is commended for his excellent work performance on the job. He claims that he has not consumed any alcohol since his last DUI arrest in 2015. Assuming this is true, he has been alcohol free for over a year and a half. He is commended for this effort and encouraged to continue with his sobriety. However, given the fact that he has abused alcohol for over 35 years, simply quitting his use for a year or so is not enough to show that he will not return to his old ways. More time in sobriety is needed in order to demonstrate that he will not relapse again, like he did after his first arrest for DUI in 2010.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualification for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the Government's national interest. Overall, based upon the seriousness of the conduct outlined here, this applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against Applicant under Guideline G (Alcohol Consumption).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against Applicant.

Subpara. 1.a.: Against Applicant.

Subpara. 1.b.: Against Applicant.

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Darlene Lokey Anderson  
Administrative Judge