



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



In the matter of: )  
)  
) ISCR Case No. 16-03137  
)  
Applicant for Security Clearance )

**Appearances**

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

11/30/2017  
\_\_\_\_\_

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

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline G, alcohol consumption. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On November 21, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. The DOD acted 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.<sup>1</sup>

---

<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR (the receipt date of the SOR answer appears to be November 19, 2016, which is erroneous, based upon the SOR date), and requested a hearing. The case was assigned to me on February 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 27, 2017, and the hearing was held as scheduled on June 21, 2017. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through C, which were admitted into evidence without objection. The record remained open until July 31, 2017, but Applicant did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on June 29, 2017.

### **Findings of Fact**

In Applicant's answer, he admitted all the SOR allegations. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 34 years old. He has never married, is currently engaged, and has no children. He has worked for a defense contractor since February 2015. He received a bachelor's degree in 2013. He served in the Army from 2002 to 2007 and was honorably discharged in the grade of sergeant (E-5). During his enlistment, he served two year-long combat deployments to Afghanistan as a combat engineer. Among the decorations he received was the Army Commendation Medal with Valor Device.<sup>2</sup>

The SOR alleged Applicant: (1) currently consumes alcohol to the point of intoxication one to two times a week; (2) was charged with underage alcohol consumption-possession in October 1999; (3) was charged with underage alcohol consumption-possession in August 2000; (4) was charged with leaving the scene of an accident, reckless driving, and underage alcohol consumption-possession in June 2002; (5) was charged with driving under the influence (DUI) of alcohol in April 2009, for which he was found guilty and was sentenced to 24 months' probation and 60 hours of community service; and, (6) was charged with DUI of alcohol in October 2013, for which he was found guilty and was sentenced to two years' probation, 56 hours of community service, and completion of an alcohol education course. (SOR ¶¶ 1.a-1.f).

During his hearing testimony, Applicant admitted responsibility for all the alcohol incidents alleged in the SOR. He began drinking alcohol before his 21<sup>st</sup> birthday. He was arrested three times for underage drinking incidents from 1999 to 2002 (SOR ¶¶ 1.b – 1.d). One incident involved him hitting another vehicle while driving, causing extensive damage, and then him leaving the scene. Investigation revealed that he had been driving, and he admitted excessive alcohol consumption at the time. These incidents all occurred before he joined the Army. In April 2009, Applicant was arrested and pleaded guilty to DUI. He drove back from his mother's house after having too much to drink and was stopped by law enforcement. His blood alcohol content was

---

<sup>2</sup> Tr. 5; GE 1.

measured at .262 percent, over three times the legal limit. In October 2013, he was again arrested and found guilty of a DUI offense. He drove home from a local bar after watching a football game and hit another car causing an accident. He was sentenced to 10 days jail time, 2 years' probation, community service, alcohol education classes, fines, and attendance at a MADD victim impact panel. He completed all of his sentencing requirements. As part of his court-ordered alcohol education requirement, he attended 12 classes for the 2009 DUI and another 12 classes for the 2013 DUI.<sup>3</sup>

Applicant described his alcohol drinking pattern from 2003 to 2007, when he was in the Army, as drinking every weekend, frequently to the point of intoxication. From 2007 to 2009, he would drink six to seven drinks during social settings. Once his probation requirements from his 2013 DUI were met, Applicant resumed drinking alcohol. From February 2016 to June 2016, Applicant was drinking six to seven drinks during any social setting and drinking to intoxication every other weekend. He currently continues to drink alcohol. He drank alcohol the week before the hearing. He claims the last time he was intoxicated was in November 2016. When he was asked specifically why he continues to drink alcohol, given his past troubled history, he responded that he really did not know why. He does not attend Alcoholics Anonymous (AA), or any other alcohol treatment program.<sup>4</sup>

As a result of his military service, Applicant receives a VA disability rating of 70 percent, 30 percent of which is related to combat related post-traumatic stress disorder (PTSD). Applicant began seeing a VA counselor concerning his PTSD in November 2016. He admitted that the impetus for seeking treatment was his receipt of the SOR. His counselor confirmed that he is engaged in outpatient treatment for PTSD and associated depression. Applicant's work supervisor stated in a letter of recommendation that Applicant is an exemplary employee who is trusted and highly valued.<sup>5</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 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, these guidelines are applied 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 ¶

---

<sup>3</sup> Tr. 15, 41; GE 2, 3, 8.

<sup>4</sup> Tr. 44-45, 48-49, 52; GE 2-4, 8.

<sup>5</sup> AE A-C.

2(a), the entire process is a careful weighing 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 national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. 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 with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant's five alcohol incidents, including two DUI convictions in 2009 and 2013, and his continued alcohol consumption support the application of the above disqualifying conditions.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

(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 judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has established a pattern of modified consumption or abstinence in accordance with treatment recommendations; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant's last adverse alcohol incident occurred in October 2013. He resumed drinking alcohol again once his probation requirements for the 2013 DUI were met. His alcohol-related incidents have not been infrequent having been arrested or charged five times since 1999. Since he continues to drink alcohol and is not receiving or participating in any alcohol treatment program, I cannot conclude that an alcohol-related incident will not recur in the future. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply.

Applicant has not acknowledged his maladaptive alcohol use pattern and he has not received the required treatment or counseling to address his alcohol abuse. Although he claims consumption reduction since November 2016, he continues to drink alcohol. AG ¶ 23(b) does not apply.

Although Applicant has participated in several alcohol education courses, there is no evidence to support his participation in any alcohol treatment programs. AG ¶ 23(d) does not 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 considered Applicant's Army service, including his combat deployments and his awarded decorations, his VA disability rating, his PTSD diagnosis and resulting treatment, and the recommendation from his supervisor. However, I also considered that he has had five alcohol incidents since 1999 and that he continues to consume alcohol without any treatment guidance. Applicant failed to provide sufficient evidence to mitigate the alcohol consumption security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline G.

### **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.f:	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.

---

Robert E. Coacher  
Administrative Judge