



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



In the matter of: )  
)  
) ISCR Case No. 16-03185  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq.

December 13, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had multiple alcohol-related incidents between 2005 and 2015. While he did not intentionally falsify his security clearance application (SF-86), he failed to mitigate the security concerns related to his alcohol use. Based on a review of the evidence, national security eligibility is denied.

**Statement of the Case**

On May 19, 2015, Applicant submitted a security clearance application (SF-86). On January 18, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines G and E. The action was taken under Executive Order (EO) 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 on September 1, 2006.

Applicant answered the SOR in writing (Answer) on February 21, 2017, and requested a hearing before an administrative judge. The case was assigned to me on April 26, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 3, 2017. I convened the hearing as scheduled on July 25, 2017. The Government offered Government Exhibits 1 through 9, which were admitted without objection. Applicant testified on his own behalf, called one witness, and presented Applicant Exhibits (AE) A through G. DOHA received the transcript of the hearing (Tr.) on August 2, 2017. The record was left open for the receipt of additional evidence. On July 26, 2017, AE H through AE J were submitted, and received without objection. The record closed as scheduled on August 1, 2017.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a through 1.e. He denied SOR allegation ¶ 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 59-year-old employee of a defense contractor. He has been employed with the defense contractor for more than four years. He held a security clearance from 2008 to 2011 in connection with prior employment, and since he started his current employment with the defense contractor. He served in the Army from January 20, 1978, to August 27, 1982. He received an honorable discharge. He is divorced, and has two adult daughters. He has a high school education. (GE 1; AE C; AE D; AE E; AE F; Tr. 27-30.)

Applicant has consumed alcohol in excess and to the point of intoxication until at least June 2015. He first started consuming alcohol at age 17 or 18. Until approximately June 2016, he would consume a six pack of beer every night and a 12 pack on the weekends. He now limits his consumption to a six pack of beer on Saturdays. (Tr. 32-33, 42, 50-52.)

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

Applicant was arrested in June 2005 and charged with Disorderly Conduct-Fighting, Criminal Damage-Deface, Driving Under the Influence (DUI)-Liquor/Drugs/Vapor/Combo, and DUI with a Blood Alcohol Content (BAC) of .08 or more. On this occasion, he had consumed a 12 pack of beer and got into an argument with his then wife. He left in his truck and his wife called the police. He was convicted of Criminal Damage-Deface and was sentenced to probation for one year, fined approximately \$600, and his driver's license was suspended for three months. He was also required to attend a course on anger management. The DUI charges were dismissed as his BAC was under the legal limit. He was ordered not to consume alcohol while on probation. He presented a certificate of completion as proof he attended the non-violence education program, as required by the court. All charges were dismissed in April 2013 after successful completion of the terms of probation. (GE 6; AE A; AE K; Tr. 33-35, 37.)

While Applicant was on probation for the June 2005 arrest and subsequent conviction, he was arrested in November 2005, and charged with Criminal Damage and Disorderly Conduct. (AE I.) Applicant described this as a verbal altercation with his former wife. He had consumed a 12 pack of beer prior to the argument, despite the court order from the June 2005 incident requiring him to abstain. He pled guilty and was ordered to attend anger management classes and was fined \$365. (AE I; Tr. 35-37.)

Applicant was arrested in November 2014 and charged with Disorderly Conduct-Fighting. Applicant consumed a 12 pack of beer and got into a verbal argument with his girlfriend. She called the police. The charge was dismissed after his girlfriend declined to press charges. After this event, Applicant sought treatment with Dr. E, a family medicine practitioner. Dr. E prescribed Applicant Etabus, an alcohol deterrent that makes one ill if they consume alcohol while using this drug. Applicant quit taking Etabus after one week and switched to drinking a six-pack only on weekends. (Answer; GE 2; GE 7; GE 9; AE 3; Tr. 39, 53-57.)

Applicant was involuntarily admitted to a hospital in April 2015, after making suicidal statements in a text to his girlfriend. He was upset because she had stolen \$3,000 from him that he planned to use to pay his bills. He had been consuming alcohol and was intoxicated on this occasion. Upon discharge from the hospital, he was referred to Alcoholics Anonymous (AA). (GE 2; GE 3; GE 5; Tr. 39-41.)

Applicant attends AA meetings once a week on Saturdays. He testified that he is working the 12-step program, and is currently on step six. However, he could not state what step six requires. He has no AA sponsor. He testified he does not go to work under the influence of alcohol. (AE H; Tr. 41-42, 44, 63, 68.) After his most recent AA meeting, he went home and consumed a six pack of beer. (Tr. 64.) When asked if he had considered abstinence, he testified, "Yes. But I haven't convinced myself of that yet. But, yes, that would benefit me much more, yes." (Tr. 43.) He recognizes that AA suggests complete abstinence from alcohol and he hopes to work toward that goal. (Tr. 61.) He also would like to attend outpatient alcohol treatment, if he can afford it. (Tr. 62.)

On Applicant's SF-86, he was asked in Section 22, "Have you EVER been charged with an offense involving alcohol or drugs?" Applicant answered this question "No." He disclosed the allegations as stated in SOR ¶¶ 1.d and 1.e, but failed to disclose his DUI arrest in June 2005. He testified that he did not intentionally falsify this question, but was under the impression that he only needed to include events in the past ten years. He volunteered information during his security clearance interview about this arrest. (GE 2; Tr. 31, 44-47.)

On April 13, 2017, Applicant signed a statement promising "to never abuse alcohol again." (AE B.) He does not consider his consumption of a six pack of beer on Saturday to be alcohol abuse. (Tr. 59.)

Applicant presented witness testimony and numerous reference letters attesting to his honesty and trustworthiness. He is known to be dependable and hardworking by his coworkers. The president and vice president of his company speak highly of him. (AE G; Tr. 19-25.)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny 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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline G: Alcohol Consumption**

The security concern relating to the guideline 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(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 the frequency of the individual's alcohol use or whether the individual has been 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 has multiple alcohol-related incidents between 2005 and 2015. He was arrested and charged with a DUI in 2005. He also has had three domestic disputes after excessive consumption of alcohol, which led to two arrests and one hospitalization. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

(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 demonstrated a clear and established 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 continues to consume alcohol, despite acknowledging that his goal is to achieve complete abstinence. Clearly, he struggles with his alcohol addiction. While he has made steps in the right direction by reducing his alcohol consumption, his continued consumption of a six pack on Saturdays, after attending AA, is troubling. His alcohol use continues to cast doubt on his current reliability, trustworthiness, or judgment. He failed to present sufficient evidence to fully establish any of the mitigating conditions.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation

with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally falsifying his SF-86. When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.<sup>2</sup>

In this case, there is insufficient evidence in the record to prove Applicant had a specific intent to falsify his SF-86. He credibly testified that he thought he didn't have to include arrests over ten years old.

Further, AG ¶ 17 provides one fully applicable mitigating condition:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

Applicant voluntarily disclosed his 2005 DUI arrest when discussing his alcohol arrests prior to being confronted with this information. His omission was not intentional and disclosure was done in good-faith.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

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<sup>2</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant performs well at his job and is trusted by his management and coworkers. However, his continued struggle with alcohol creates questions about his current reliability, trustworthiness, and judgment. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Alcohol Consumption security concerns, although he did mitigate the Personal Conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	Against APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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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Jennifer Goldstein  
Administrative Judge