



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 17-00301
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert Blazewick, Esq., Department Counsel  
For Applicant: *Pro se*

12/18/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his past alcohol-related problems. Clearance is granted.

**Statement of the Case**

On April 13, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline G (alcohol consumption). Applicant answered the SOR and requested a determination on the administrative (written) record.

On June 16, 2017, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant seven exhibits, pre-marked Items 1 – 7, which the Government offers for admission into the record. Applicant did not submit a response or raise an objection to the offered exhibits. The Government's exhibits are admitted into the record.

On November 3, 2017, I was assigned Applicant's case. After confirming that he remains sponsored for a security clearance, I reopened the record to provide the parties an opportunity to submit updated information regarding his eligibility. Applicant submitted Exhibits A – E, which are admitted into the record without objection.

## Findings of Fact

Applicant, 39, is employed as a federal contractor on a U.S. military base. He was initially found eligible for a security clearance in 2006.<sup>1</sup> He has an excellent reputation for his work, reliability, and honesty. His supervisor for the past 11 years states that Applicant is an “exemplary employee . . . who has made the necessary adjustment to his life, to include sobriety, so he will not make the same mistakes involving drinking and driving.”<sup>2</sup>

Applicant’s alcohol-related problems date back to 1998, when he was cited for underage possession of alcohol while in high school.<sup>3</sup> Ten years later, in 2008, he was arrested for driving under the influence (DUI). He had been out at a bar with friends and consumed a number of mixed drinks (jack and coke) in a short time span. He was pulled over for speeding and was arrested for DUI. His license was suspended for three months and he went through a diversion program for first time offenders. The DUI charge was subsequently dropped.<sup>4</sup>

Applicant continued to drink alcohol following the 2008 DUI, but it decreased sharply after he married in 2010. Applicant’s problematic drinking began anew after his marriage started falling apart. In 2015, his wife told him that she wanted a divorce and was going to move out of state with their son. He started drinking to “numb the pain.”<sup>5</sup>

In November 2015, Applicant went out with some male friends to watch a band play at a local club, when he bumped into an old female acquaintance. He consumed a significant amount of alcohol (vodka tonics and shots of fireball) with her and shortly after leaving her apartment was pulled over by the police for a traffic violation. He provided a breath sample at the scene, which measured his blood alcohol content (BAC) at .13. A few months later, Applicant pled guilty to the DUI charge. He was placed on probation for 15 months. He was ordered to obtain an alcohol evaluation and receive the treatment recommended by the evaluator. He was also required to attend Alcoholics Anonymous (AA) twice a week while on probation.<sup>6</sup>

Applicant’s probation officer, who held the position of senior probation officer before his recent promotion, submitted a letter on Applicant’s behalf. He verified that

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<sup>1</sup> Item 2; Exhibit B.

<sup>2</sup> Exhibit B at 1.

<sup>3</sup> Item 3 at 36; Item 7 at 6; Exhibit E at 3. The 1998 incident was not alleged. I only considered it in assessing mitigation and conducting a whole-person analysis.

<sup>4</sup> Item 3 at 35; Item 4 at 2; Item 7; Exhibit E at 3.

<sup>5</sup> Item 4 at 2. On his 2014 security clearance application, Applicant reported the 1998 underage possession of alcohol citation, the 2008 DUI arrest, and the year-long marital counseling he obtained and received in an attempt to try to save his marriage. (Item 2 at 33-35) He discussed these issues and the 2015 DUI during his security clearance interviews. (Items 4, 7)

<sup>6</sup> Item 4 at 1 -2; Item 5; Item 6.

Applicant was “always compliant” with probationary terms, including obtaining the required alcohol evaluation and treatment. The probation officer also verified that the alcohol and drug screens, which were randomly given to Applicant while on probation, were negative. The probation officer concluded his letter by stating:

I have observed [Applicant’s] behaviors and seen progress that he has made. He changed his associations as well as his hobbies and has produced a positive lifestyle. [He] has made a conscious decision to become proactive in his sobriety and life. He has surrounded himself around a positive and supportive environment. [He] has become a law abiding citizen I would have no concerns to give a positive recommendation.<sup>7</sup>

Applicant successfully completed all terms of his court sentence and was released from probation in July 2017.<sup>8</sup> He continues to attend and participate in AA on a regular, weekly basis. Applicant’s sponsor submitted a letter, noting the seriousness with which he has observed Applicant commit to his ongoing recovery and sobriety.<sup>9</sup>

Applicant stopped consuming alcohol in March 2016, when he entered his guilty plea for the November 2015 DUI. He has reconnected with old friends, lost weight, goes to the gym now five to six days a week, and enjoys fishing. He had a religious conversion following the 2015 DUI and regularly attends church.<sup>10</sup> Over the past year, Applicant helped a high school friend who was going through similar problems with alcohol. Applicant helped his friend get into AA, abstain from alcohol, and turn his life around.<sup>11</sup>

A licensed alcohol and drug counselor (LADC) recently evaluated Applicant. The LADC provided an updated diagnosis of mild alcohol abuse in remission.<sup>12</sup>

### **Law, Policies, and Regulations**

This case is decided under Executive Order (E.O.) 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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017. ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

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<sup>7</sup> Item 2.

<sup>8</sup> Exhibit C.

<sup>9</sup> Item 2; Exhibit A; Exhibit E.

<sup>10</sup> Item 4 at 3; Exhibit A; Exhibit E.

<sup>11</sup> Exhibit B at 2.

<sup>12</sup> Exhibit E. Applicant admits that while in treatment for the 2015 DUI, he was diagnosed with alcohol use disorder (moderate).

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Instead, persons are only eligible for access to classified information “upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. AG ¶ 2.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges must remain fair and impartial, and carefully balance the needs for the expedient resolution of a case with the demands of due process. Therefore, an administrative judge will ensure that an applicant: (a) receives fair notice of the issues, (b) has a reasonable opportunity to address those issues, and (c) is not subjected to unfair surprise. Directive, ¶ E3.1.10; ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In evaluating the evidence, a judge applies a “substantial evidence” standard, which is something less than a preponderance of the evidence. Specifically, substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive, ¶ E3.1.32.1.<sup>13</sup>

Any doubt raised by the evidence must be resolved in favor of the national security. AG ¶ 2(b). See also Security Executive Agent Directive 4 (SEAD-4), ¶ E.4. Additionally, the Supreme Court has held that responsible officials making “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions

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<sup>13</sup> However, a judge’s mere disbelief of an applicant’s testimony, without actual evidence of disqualifying conduct or admission by an applicant to the disqualifying conduct, is not enough to sustain an unfavorable finding. ISCR Case No. 15-05565 (App. Bd. Aug. 2, 2017); ISCR Case No. 02-24452 (App. Bd. Aug. 4, 2004). Furthermore, an unfavorable decision cannot be based on solely non-alleged conduct. ISCR Case No. 14-05986 (App. Bd. May 26, 2017). Unless an applicant is provided notice that unalleged conduct raises a security concern, it can only be used for specific limited purposes, such as assessing mitigation and credibility. ISCR Case No. 16-02877 at 3 (App. Bd. Oct. 2, 2017).

include, by necessity, consideration of the possible risk an 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.

## **Analysis**

### **Guideline G, Alcohol Consumption**

Applicant's past alcohol-related problems raise a serious security 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. *See generally* AG ¶ 21.

In assessing the security concern in this case, I have considered all the disqualifying and mitigating conditions listed under Guideline G, including:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence . . . 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;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(d): diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

AG ¶ 23(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;

AG ¶ 23(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;

AG ¶ 23(c): the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

AG ¶ 23(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 stopped drinking alcohol nearly two years ago. He continues to attend AA and has made other positive lifestyle changes to maintain his sobriety. His probation officer, AA sponsor, supervisor, and others submitted letters attesting to his sobriety. A recent evaluation by a licensed alcohol and drug counselor concluded that Applicant's alcohol abuse is in remission. In short, Applicant met his burden of proof and persuasion in mitigating the security concerns raised by his past alcohol-related issues.<sup>14</sup> AG ¶¶ 23(a) – 23(d) apply. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for continued access to classified information.<sup>15</sup>

### **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.c:

For Applicant

### **Conclusion**

In light of the record evidence, it is clearly consistent with the interests of national security to grant Applicant initial or continued eligibility for access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>14</sup> *Contrast with* ISCR Case No. 12-04813 (App. Bd. July 31, 2015) (judge erred in relying on uncorroborated claims of reform and rehabilitation in finding that applicant mitigated security concerns).

<sup>15</sup> In reaching this conclusion, I also considered the favorable whole-person factors raised by the evidence, including Applicant's candor and cooperation during the course of security clearance investigation. See AG ¶ 2 (whole-person concept). See also SEAD-4, ¶ E.4 (relevant factors to consider in determining whether granting a person a clearance is clearly consistent with the interests of the United States).