



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



In the matter of:

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) ISCR Case No. 17-00318  
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Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

02/07/2018

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant has a history of alcohol-related arrests. He did not mitigate the resulting alcohol consumption concerns, but did mitigate the personal conduct security concerns. National security eligibility for access to classified information is denied.

**History of Case**

On January 13, 2016, Applicant submitted a security clearance application (SF 86). On April 10, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct). The action was taken under Executive Order 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) effective within the DoD after September

1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

Applicant answered the SOR in writing on May 4, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 22, 2017. DOHA issued a Notice of Hearing on August 24, 2017, setting the hearing for September 20, 2017. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, called two witnesses, and offered Exhibits (AE) A and B into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on September 28, 2017.

### **Findings of Fact**

Applicant is 27 years old and unmarried. He graduated from high school in 2008 and earned a bachelor's degree in 2015. He started working for a defense contractor in 2016. Prior to this position, he worked at various jobs and attended college. (Tr. 15-18)

Applicant admitted that he has been arrested three times for charges involving alcohol consumption, as alleged in the SOR. In November 2010, he was arrested and charged with consumption of liquor/minor, a misdemeanor. Applicant was driving and was stopped by the police, he was given a field sobriety test and then taken to a police station. He took a breathalyzer. His blood alcohol content (BAC) was 0.11, which was over the legal limit. He paid a \$155 fine and took a driver's education class. He was placed on court supervision for 90 days.<sup>2</sup> (GE 5) This arrest occurred four days before his 21<sup>st</sup> birthday. He was drinking beer with a college friend a few miles from home. He admitted that he made a bad decision to drive that night and did not fully appreciate the consequences his behavior could have on his future. (Tr. 24-26; GE 4) He resumed consuming alcohol after his supervision ended. (Tr. 27-28)

In October 2011, Applicant was arrested and charged with driving under the influence (DUI), a misdemeanor. That evening he drove a friend home from a party where Applicant had consumed four drinks. He was driving erratically when a policeman stopped him. His breathalyzer indicated a BAC of 0.08. He was placed on two years of supervised probation and ordered to pay a \$2,000 fine. He was ordered to undergo level 3 alcohol treatment and to complete 20 hours of classes. After this arrest, he began realizing the implications of his actions and became vigilant about not drinking and driving. (Tr. 28-31; GE 2, GE 5)

In May 2016, Applicant was arrested by the police and charged with DUI, a misdemeanor. He had consumed 9 or 10 drinks over a 10-hour period. While driving home

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

<sup>2</sup> Applicant mistakenly testified that he was placed on probation for a year, fined \$1,500, and had his driver's license suspended after this charge. The police record documents the resolution as set forth in the Decision. (GE 5)

he swerved to miss an animal and ran into a ditch. He managed to pull his wrecked car out of the ditch. At some point, the police saw him walking at 3 a.m., looking for a car part. He failed a field sobriety test and refused a breathalyzer. He told his supervisor about the incident within the week it happened. These charges were pending at the time of this hearing. His driving privileges had not been suspended as of this hearing. (Tr. 31-36; GE 2) He admitted that he stopped being vigilant about driving after consuming alcohol. (Tr. 44)

After his last arrest in May 2016, Applicant voluntarily participated in a DUI Risk education class. The course involved 10 hours of assessing one's risk of alcohol abuse and 10 hours of group therapy. He was diagnosed as a social drinker on the course's risk scale. The course ended in September 2016. He has not participated in any subsequent treatment or been evaluated by a duly qualified medical or mental health professional for an alcohol use disorder. (Tr. 20-22)

Applicant testified credibly and felt embarrassed by his behavior. The last time he drank alcohol was the weekend before this hearing. He consumed five beers over seven hours while with friends. He spent the night at his friend's house. He acknowledged he felt intoxicated that night. He generally drinks beer once a week, over the weekend. (Tr. 19-20, 35-36, 45) His family and friends are aware of the alcohol charges. (Tr. 59-60)

Two witnesses testified for Applicant. One of his employers, an Air Force veteran, said that Applicant has been productive and collaborative in his work. He noted that all of his performance evaluations have been exceptional. He has no reservations about Applicant holding a security clearance. Applicant's technical lead for the past three years complimented Applicant on his work performance and reliability. He has never observed Applicant exhibit impaired behavior. He supports his request for a security clearance. (Tr. 46-59)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the 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. Directive ¶ E3.1.15 says that 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 *a/so* Executive Order 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 concerns 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 two may potentially 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 was arrested three times for crimes involving alcohol consumption and driving a vehicle. In 2010, he was convicted of consuming alcohol as a minor. In 2011, he was convicted of a DUI. Both times, he was inebriated, and over the legal limit for driving. The third charge, a 2016 DUI, is pending. The evidence established the above three disqualifying conditions.

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline:

(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;

(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

(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.

Within a six-year period, Applicant was charged three times with crimes involving alcohol and driving. Not enough time has passed since the last offense in 2016, nor has any of the conduct occurred under unusual conditions. AG ¶ 23(a) does not apply. Applicant acknowledged his problems with alcohol and driving, but he has not provided sufficient evidence of steps he has taken to prevent similar incidents. Despite his claim to be more vigilant after his second arrest, he failed to do so. AG ¶ 23(b) does not apply. There is no evidence to establish mitigation under AG ¶¶ 23(c) and (d). Although he participated in an alcohol assessment and a court-ordered alcohol awareness program, he has not participated in counseling or a treatment program as prescribed in the mitigating conditions.

## **Guideline E: Personal Conduct**

AG ¶ 15 explains the security concerns relating to personal conduct:

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.

The guideline at AG ¶ 16 contains no disqualifying condition that would support security concerns in this case that are independent of those comprehensively addressed under Guideline G. The SOR merely re-alleges by reference the allegations raised under those guidelines. While any conduct involving questionable judgment or unwillingness to comply with rules and regulations can theoretically fall under Guideline E, as well as other guidelines, no value is added to the analysis of Applicant's national security eligibility by doing so in this case.

## **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 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 pertinent facts and circumstances surrounding this case. Applicant is an intelligent, candid and honest adult, who is successfully performing for his employer. He understands that he is accountable for the decisions that underlie his history of criminal conduct and the resulting security concerns. Although he appreciated the consequences of a DUI after his 2011 arrest, he failed to take sufficient precautions to prevent another incident. He has not participated in alcohol counseling or treatment as articulated in the mitigating conditions. At this time, the final disposition of his last criminal offense is unknown. Given that, and Applicant's honest admission that he consumed alcohol to the point of

inebriation the week before this hearing, there is insufficient evidence to mitigate the alcohol consumption security concerns or my doubts as to Applicant's eligibility and suitability for a security clearance at this time.

### **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 J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT (Duplicative) <sup>3</sup>
Subparagraph 2.a:	For Applicant (Duplicative)

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM  
Administrative Judge

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<sup>3</sup> Paragraph 3 is duplicative of Paragraphs 1 and 2. It supports no separate findings of security concern.