



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



In the matter of: )  
)  
) ISCR Case No. 17-01466  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole Smith, Esq., Department Counsel  
For Applicant: *Pro se*

04/05/2018  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 1, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on October 23, 2017. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 7 are admitted into evidence. The case was assigned to me on March 2, 2018.

### **Findings of Fact**

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

Applicant is 53 years old. He earned a bachelor's degree and a master's degree in 1987 and 1992, respectively. He married in 1988 and divorced in 1995. He remarried in 2001 and has an eight-year-old child from the marriage. He has been employed by his present employer, a federal contractor, since 2009.<sup>1</sup>

Applicant admitted in his SOR answer that he has consumed alcohol, at times in excess and to the point of intoxication, from 2010 until at least July 2017. He admitted that in about April 2016, one or more employees at his work reported that he smelled of alcohol during work hours. He admitted that he was sent to his employer's human resource department and was referred for alcohol treatment. He admitted he received inpatient treatment from approximately May 2016 to July 2016, and that he was diagnosed as alcohol dependent. SOR ¶ 1.d alleged that following treatment, and despite his diagnosis, Applicant resumed regularly drinking, and consumed alcohol to the point of intoxication on multiple occasions. Applicant denied this allegation and his response said, "I deny. Never at work. Only during personal time."<sup>2</sup>

On April 21, 2016, Applicant's employer initiated an incident report. It stated that several employees reported smelling alcohol on Applicant's breath in the office and during work hours. The office manager contacted Applicant who admitted having issues with alcohol due to ongoing family issues. The Human Resource Department contacted Applicant with suggested treatment options. The report reflected that Applicant started treatment on May 4, 2016. He was given time off by his employer with pay.<sup>3</sup>

Applicant was admitted to the treatment facility with a diagnosis of alcohol dependence. He reported that after college his alcohol consumption increased and eventually developed into binge drinking. He admitted to the admissions counselor that he used alcohol daily for the past 20-30 years, which consisted of "about 6 glasses, at least 12 oz. each of Vodka."<sup>4</sup> His last use was the day he was admitted, and it consisted

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<sup>1</sup> Item 3.

<sup>2</sup> Item 2.

<sup>3</sup> Items 4, 5.

<sup>4</sup> Item 7.

of two glasses of vodka and diet coke and a margarita. He was prescribed medicine for nausea and vomiting due to acute alcohol withdrawal, but also had chronic nausea for years that worsened due to stress. He told the admissions counselor that in the past two years his alcohol consumption increased after his boss became sick and he had to take on additional work responsibilities, and also when his father developed an illness and later died in December 2015. His admission diagnosis was “alcohol dependence with induced mood disorder; alcohol dependence with withdrawal; sedative abuse with induced mood disorder; generalized anxiety disorder; and depressive disorder, unspecified.”<sup>5</sup>

Applicant participated in the alcohol treatment program and was subsequently given a treatment plan. He was treated by qualified medical professionals, alcohol counselors, and was diagnosed by a medical doctor. Applicant worked diligently in a small group, obtained an Alcoholics Anonymous (AA) sponsor who he met weekly for a face-to-face meeting, and who called him daily. He completed an individualized Relapse Prevention Plan, identifying high-risk situations and triggers, along with specific plans and behavior to cope with each situation. He completed a Continuing Care Plan, which identified his willingness to attend regular recovery groups meetings, aftercare therapy, helping others with recovery, and becoming involved in the Twelve-Step Fellowship. Additional areas were identified and included in the plan. He committed to attending a local aftercare facility close to his home to begin in July 2016.

Applicant was discharged from the inpatient treatment facility on July 10, 2016. His discharge diagnosis was as follows: alcohol dependence with induced mood disorder; alcohol dependence with withdrawal, resolved; sedative abuse with induced mood disorder; generalized anxiety disorder; and depressive disorder, in early remission. He was discharged, after meeting all of the criteria for a successful discharge “with a “guarded prognosis.”<sup>6</sup> In addition to noting that Applicant complete the above aftercare programs, the discharge document recommended that Applicant obtain a permanent sponsor upon returning home and participate in counseling near his home town.<sup>7</sup>

Applicant was interviewed by a government investigator on March 30, 2017. He told the government investigator that he participated in an inpatient alcohol treatment program for ten weeks, was seen by one of two different psychologists for counseling every two weeks, but he did not recall being diagnosed with a disorder or a prognosis. He told the investigator that he was not referred to any other counseling or mental health providers, but it was suggested by his inpatient treatment providers that he become a member of AA. He told the investigator that he attended AA for two to three months after he was discharged, but found the religious aspect of AA did not align with his personal beliefs, so he discontinued going. He did not resume alcohol consumption for three to four months after the treatment program. His intention upon completing treatment was

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<sup>5</sup> Item 7.

<sup>6</sup> Item 7 page 5.

<sup>7</sup> Item 7.

not to drink alcohol again, but in late 2016, he decided to have an alcoholic drink. He told the investigator that he did not know why he made that decision. Since late 2016, he admitted he consumes approximately two vodka and cola drinks each evening and has consumed alcohol to the point of intoxication on five or six occasions since about late 2016. He drinks at home with his wife or alone. He told the investigator that he feels he is managing his use of alcohol appropriately. He has less pressure in his life now and has not felt the need to drink heavily to ease his stress.<sup>8</sup>

Applicant did not provide any updated information about his alcohol consumption since his March 2017 interview.

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 ¶ 2(c), the entire process is a conscientious scrutiny 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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

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<sup>8</sup> Item 5.

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 as to 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 for 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. I find the following to be potentially applicable:

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

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

(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.

Applicant’s coworkers reported that he smelled of alcohol while at work. Although there were no specific negative incidents reported, this information is sufficient to raise AG ¶ 22(b). He participated as an inpatient in a 10-week alcohol treatment program and was diagnosed by a duly qualified medical professional as alcohol dependent. There is sufficient evidence to conclude he failed to follow treatment advice after he was diagnosed as alcohol dependent and discharged from the treatment facility in July 2016. He abstained from alcohol consumption for three to four months after his discharge and then resumed consuming alcohol. In March 2017, he admitted to the government

investigator that he had resumed drinking alcohol nightly, and had been intoxicated five to six times since his resumption. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under 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;
- (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.

Applicant completed a 10-week inpatient treatment program. He was diagnosed as alcohol dependent with a guarded prognosis. He developed a Continuing Care Plan and a Relapse Prevention Plan. Applicant identified a willingness and commitment to become involved with a Twelve-Step Fellowship and obtain a permanent sponsor upon returning home and agreed that he would participate in counseling near his hometown. There is insufficient evidence that Applicant complied with any of the aftercare plans. Shortly after being discharged from treatment, he resumed drinking alcohol and believes he can now better manage his alcohol consumption. He made this statement to the government investigator in March 2017 and acknowledged he had been intoxicated five to six times in the past five months. He continued to drink alcohol nightly. Although there have been no reported alcohol incidents, the evidence is sufficient to raise questions about Applicant's failure to control impulses when it comes to consuming alcohol, which may lead to the exercise of questionable judgment and can raise questions about his reliability and trustworthiness. The Government is not required to wait for an incident to occur before raising questions about Applicant's judgment that raises security concerns. Applicant failed to show that he has changed his conduct to reduce the risk associated with his continued alcohol consumption. Basically, after inpatient alcohol treatment, he resumed the conduct that was alleged as a security concern. In addition, he did not provide updated information about his current alcohol consumption, post-treatment progress, or compliance with aftercare. None of the mitigating conditions 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 have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 53 years old. He has a history of consuming alcohol to the point of intoxication. His coworkers reported smelling alcohol on him during work hours. He participated in a 10-week inpatient alcohol treatment program and was diagnosed as alcohol dependent. Despite developing plans to abstain from alcohol consumption, several months after he was discharged from a treatment facility, he resumed drinking alcohol and at times to the point of intoxication. Applicant's continued consumption of alcohol raises serious questions about his judgment and reliability. He did not provide evidence to mitigate the security concerns raised by his alcohol consumption. The record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline G, alcohol consumption.

## **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.d:	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 security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge