



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01677  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

05/16/2018  
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**Decision**  
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CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 20, 2016. On June 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and E.<sup>1</sup> Applicant responded to the SOR on July 14, 2017, and requested a hearing before an administrative judge.

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<sup>1</sup> The DOD CAF acted under Executive Order (Exec. Or.) 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.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 13, 2017, and the hearing was convened on November 15, 2017. Government Exhibits (GE) 1 through 8 and Applicant's Exhibits (AE) A through G were admitted in evidence. Applicant testified. The record was held open for the submission of additional documentary evidence. Applicant timely submitted AE H through P, which were admitted without objection.

### **Findings of Fact**

Applicant is a 54-year-old technical writer, employed by a defense contractor since 2015. He is a high school graduate, unmarried, and has no children. He was previously married three times. Applicant honorably served on active duty in the United States Air Force from 1982 to 1986. He previously held DOD security clearances while on active duty and as a civilian with another employer. He does not currently hold a clearance.

The SOR alleges under Guidelines G and E, excessive use of alcohol from high school to 2016; a 1979 arrest for driving under the influence of alcohol (DUI); a 1988 arrest for public intoxication and possession of drug paraphernalia; 1997 treatment and diagnoses of alcohol dependence; attendance at Alcoholics Anonymous (AA) meetings; continued consumption of alcohol despite the aforementioned treatment and diagnosis; and alcohol consumption in 2016 that led to two warnings from his employer for poor attendance. Under Guideline E, the SOR cross-alleges all of the above allegations except for his alcohol treatment and attendance at AA meetings. Applicant generally admitted the SOR allegations, but contested the period in which he consumed alcohol in excess, and provided explanations in his Answer to the SOR allegations.

In high school and as a young adult, Applicant used illegal drugs. He began consuming alcohol at about age 12 or 13 years old. In 1979, he was arrested for DUI, but found "not guilty" after a jury trial. He enlisted in the Air Force in 1981, and admitted to using marijuana while on active duty with a security clearance. He testified that he stopped using marijuana in 1990, and all other drugs were stopped after graduating from high school. After separating from the Air Force in 1986, Applicant worked for a defense contractor. In 1988, Applicant was arrested for public intoxication and possession of drug paraphernalia after passing out in a parking lot after drinking and driving from a softball game. He pleaded guilty and paid a fine.

Applicant completed an SCA in 1992, but did not disclose all of his previous drug use. He eventually corrected the record as to his drug use, and made two sworn statements in November 1997 (GE 7 and 8). He also sought a 30-day outpatient counseling program in 1997 for alcohol abuse. He was diagnosed as alcohol dependent, but Applicant testified that he did not fully understand this diagnosis at the time. Applicant testified that he believed he could stop drinking if he wanted to, but he did not want to.

In 2002, Applicant completed another sworn statement updating his alcohol use and past drug use. At that time, he began to realize that he had a problem with alcohol, and tried to alter his alcohol consumption, but was unsuccessful. After failing to correct

his behavior on his own, he sought assistance from AA in 2004. He stated in his Answer to the SOR, that from 2004 to June 2014, he completely abstained from alcohol use, and was a faithful AA attendee and contributor. He reported in his Answer that he relapsed in June 2014.

In testimony, Applicant claimed that he relapsed three times. The first was in the summer of 2015 while attending a wedding. He continued to drink for two months. He again relapsed in December 2015 to March 2016 because of moving and failure to actively participate in AA. Finally, he relapsed again from November 2016 to April 2017 as a result of depression. He returned to AA participation in December 2016, and became fully engaged in AA in April 2017. He chairs meetings, is a trusted member of the group, and has a sponsor. He has not sought any medical or counseling assistance outside of AA and his 1997 treatment, despite his relapses.

Applicant was interviewed by an Office of Personnel Management (OPM) investigator in February 2017. He stated to the investigator that he rejoined AA in March 2016 to reestablish his sobriety program, and that he has not consumed alcohol since March 2016. In testimony, he admitted that that statement was “misleading or a lie on my part.”<sup>2</sup> Applicant admitted that the two written warnings from his employer in 2016 were a result of alcohol use and hangovers. He acknowledges that his alcohol has affected his work performance. Applicant testified that he has been sober since April 26, 2017.

Applicant submitted 13 letters of support from friends, colleagues, supervisors, and fellow AA members. They universally attest to Applicant’s honesty, trustworthiness, reliability, and professionalism. He also submitted three achievement awards recognizing his outstanding work performance.

## **Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies

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<sup>2</sup> Tr. 58.

these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See Egan, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See v. Washington Metro. Area Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." Egan, 484 U.S. at 531; see AG ¶ 1(d).

## **Analysis**

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

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 22. 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 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's alcohol consumption resulting in a history of arrests, two warnings from his employer, repeated relapses, and diagnosis of alcohol dependency raises concerns under this guideline. The above disqualifying conditions apply.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (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 history of alcohol-related incidents has recurred over a number of years. Despite a diagnosis of alcohol dependency during his 1997 outpatient counseling, Applicant did not acknowledge his problem until about 2002, but did not engage in AA

meetings until 2004. Since then, he has acknowledged his struggle with alcohol and since April 2017, has returned to regular, active participation in AA. After years of relapses and alcohol-related incidents, Applicant has a high bar to show that his promised abstinence is sincere and lasting. He has not sought professional alcohol counseling or treatment since 1997, despite continued relapses and ineffective AA counseling. At this time, there is insufficient evidence of a clear and established pattern of modified consumption or abstinence. Insufficient time has passed to conclude his alcohol problem is under control. However, pursuing alcohol treatment is a positive step. There is insufficient evidence that Applicant was advised to abstain from alcohol consumption after his diagnosis of alcohol dependence. Therefore, I find in favor of Applicant with regard to SOR ¶¶ 1.d, 1.e and 1.f. With regard to the remaining SOR allegations, none of the mitigating conditions fully apply or are sufficiently established to overcome concerns about his established pattern of excessive alcohol use.

### **Guideline E: Personal Conduct**

The concern under this guideline 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.

The relevant disqualifying condition under AG ¶16 is:

(c) credible adverse information in several adjudicative issues areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's conduct as noted in the findings of fact, invokes questionable judgment and personal conduct that create a vulnerability to exploitation, manipulation, or duress. AG ¶¶ 16 (c) and (e) apply.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant's history of substance abuse shows a pattern of unmitigated behavior that continues to raise questions of reliability, trustworthiness and questionable judgment. Insufficient time has passed with modified behavior to find that adverse actions from alcohol consumption are unlikely recur. I expressly incorporate my findings under Guideline G, above. I find no mitigating condition is fully applicable.

### **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 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.

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 Guidelines G and E

in my whole-person analysis. I also considered Applicant's education, military and work history, and favorable character evidence, as well as his testimony and documentary evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the alcohol consumption and personal conduct security concerns.

### **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:

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|-----------------------------------|-------------------|
| Paragraph 1, Guideline J:         | Against Applicant |
| Subparagraphs 1.a-1.c, and 1.g-h: | Against Applicant |
| Subparagraphs 1.d-f:              | For Applicant     |
| Paragraph 2; Guideline G:         | Against Applicant |
| Subparagraph 2.a:                 | Against Applicant |

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is denied.

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Gregg A. Cervi  
Administrative Judge