



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



In the matter of: )  
)  
) ISCR Case No. 17-02132  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

08/13/2018

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**Decision**

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KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the alcohol consumption security concerns. Eligibility for access to classified information is granted.

**Statement of the Case<sup>1</sup>**

On September 1, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on June 8, 2017.

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<sup>1</sup> Unless otherwise indicated by citation, the source for this information is Applicant's November 4, 2014, Electronic Questionnaires for Investigations Processing (e-QIP) (Item 4), Answers to Interrogatories (Items 5 and 6), and Personal Subject Interview (PSI) with an Office of Personnel Management (OPM) investigator on September 3, 2013. (Item 8)

Applicant responded to the SOR on October 4, 2017, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 9, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 20, 2018. Applicant responded with a two-page letter dated May 9, 2018, with attachments including a 2017 performance evaluation and ten positive character reference letters. The Government exhibits identified as Items 1 through 11 included in the FORM are admitted into evidence, without objection.

### **Findings of Fact**

Applicant is a 41-year-old employed as a help desk administrator in Afghanistan with a defense contractor since June 2012. Previously, he was employed as a network engineer by a defense contractor from 2005 to 2010. He obtained a bachelor's degree online in 2016. He served on active duty in the U.S. Marine Corps (USMC) from 1996 to 2005, and he was honorably discharged as an E-4, Corporal. He served his last two years on combat deployments to Afghanistan and Iraq and received numerous awards. Applicant reports having a security clearance since 1997, without incident. He was married in 1996 and divorced in 2004; then, married again since December 2004. He has six children.

Applicant disclosed five alcohol-related events from 1997 to 2011, including driving while intoxicated (DWI) in 2004, in his Questionnaire for National Security Positions, also known as a Security Clearance Application (SCA) that he signed in December 2014. He admitted all of the allegations in SOR ¶¶ 1.a through 1.f including drinking, often to excess, from 1993 to 2011, even after being diagnosed with Alcohol Use Disorder (AUD).<sup>2</sup> Applicant stated that he started drinking at age 16, and had alcohol-related problems after he joined the Marine Corps.<sup>3</sup>

In 1997, Applicant received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for underage drinking.<sup>4</sup> He was sentenced to reduction in rank from E-3, Lance Corporal, to E-2, Private First Class. (SOR ¶ 1.a) In 2001, he was ordered to residential treatment at a Naval Hospital for four weeks of in-patient treatment. He stayed sober for one year, but had another alcohol-related NJP in 2003 for violating an order to refrain from alcohol and stay out of local bars outside the Marine base.<sup>5</sup> (SOR ¶ 1.b) He was sentenced to reduction in rank from E-5, Sergeant, to E-4, Corporal. In 2004, Applicant was arrested for Driving While Intoxicated (DWI) by local authorities in the town adjoining the Marine base. (SOR ¶ 1.c) Applicant admits all

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<sup>2</sup> Answer to SOR.

<sup>3</sup> Item 8.

<sup>4</sup> Item 8.

<sup>5</sup> Item 5, attached psychological evaluation report dated November 2, 2016.

of these infractions and concedes he is a recovering alcoholic in his response to the FORM.

In his post combat and post Marine Corps civilian-contractor career, Applicant continued to struggle with alcoholism. In 2010, he was supposed to meet with a contractor colleague and fly from Dubai to Afghanistan. Applicant purchased two bottles of vodka at the duty free store, and drank for two days, missing the flight. (SOR ¶ 1.d) A missing person report was filed, and Applicant asked his civilian employer for help. His contractor employer flew him back to the United States and paid for him to attend treatment.<sup>6</sup> Applicant completed six weeks of in-patient treatment. He resigned from that company and was unemployed for three months before getting picked up by another contractor-employer. He stayed sober for about nine months, but then relapsed again in Brazil in 2011, when he missed a work day due to being hung over. (SOR ¶ 1.e) He received a reprimand and a demotion from his employer.<sup>7</sup>

In his answers to interrogatories, Applicant stated that he has abstained from alcohol since August 2016.<sup>8</sup> He has no intention to drink again in the future. He attached a copy a November 2, 2016 psychological evaluation to his answers to interrogatories.<sup>9</sup> The Psychiatrist diagnosed Applicant with Alcohol Use Disorder (AUD) – moderate, and recommended that he abstain from drinking, continue to attend Alcoholics Anonymous (AA) meetings, and consult periodically with an addiction specialist. The Psychiatrist noted no indications of post traumatic stress disorder (PTSD) or other psychological problems or suicidal ideation - depression, and no violence associated with Applicant's affliction. Applicant also has great support from his family, church, and AA sponsor(s) for his recovery. He attached ten very favorable character reference letters to his response to the FORM, including from his wife, in-laws, colleagues and friends. All attest to his honesty, work ethic, determination to remain sober, trustworthiness and reliability. He is a devoted father and family man who has turned his life around in the last few years.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in

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<sup>6</sup> Item 8.

<sup>7</sup> Item 8.

<sup>8</sup> Item 5.

<sup>9</sup> Item 5.

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 access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain 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 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 the 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.

Section 7 of EO 10865 provides that adverse 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**

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 is 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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

(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;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant has five alcohol-related incidents, including his DUI arrest in 2004, after completing in-patient treatment at a naval hospital. His alcoholism impacted his work and his life. Applicant disclosed these transgressions in his SCA and he has admitted them in his Answer to the SOR. AG ¶¶ 22(a) and 22(c) are applicable. He also admitted to continuing to consume alcohol through August 2016 after being diagnosed with AUD. (SOR ¶ 1.f) It is unclear when he was initially diagnosed with AUD. The psychiatrist who performed his psychological evaluation diagnosed him with AUD in November 2016. Yet, it is clear that Applicant had in-patient treatment before that in 2001 and 2010, where it was recommended he refrain from using alcohol. He admits to problems quitting and this is part of the illness. AG ¶¶ 22(d), (e), and 22(f) are applicable.

AG ¶ 23 provides conditions that could mitigate security concerns. 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 good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(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 inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or

abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). See *also* ISCR Case No. 08-04232 (App. Bd. Oct. 9, 2009) (affirming denial of security clearance for Applicant with alcohol-related criminal offenses for six years prior to hearing). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption and Applicant's history of alcohol consumption.<sup>10</sup> He began consuming alcohol, with breaks as long as one year, from 1993 to 2016. His NJP's were by definition, for minor offenses in a military setting. He had one DWI conviction. Otherwise, his disease has not impacted society, but harmed Applicant's civilian and

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14. The criteria for "alcohol abuse" and "alcohol dependence" are drawn from the Diagnostic and Statistical Manuals of Mental Disorders (DSM) DSM-IV-TR, which was in effect when the Adjudicative Guidelines were issued in 2006. In May 2013, the APA issued the 5th edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The criteria in DSM-IV-TR for alcohol dependence and in DSM-5 for alcohol use disorder (AUD) are objective, well established, and rely primarily on self-reports and descriptions. DSM-5 integrates the two DSM-IV disorders, alcohol abuse and alcohol dependence, into a single disorder called alcohol use disorder (AUD) with mild, moderate, and severe sub-classifications. DSM-IV-TR and DSM-5 are used throughout the medical and legal communities to determine alcohol dependence and AUD severe, which have the same criteria. AUD-moderate overlaps with both alcohol abuse and alcohol dependence. The alcohol consumption guideline does not incorporate DSM remission criteria and leaves mitigation to a case-by-case determination.

military careers. He has been treated twice but never diagnosed as alcohol dependent. He was diagnosed with AUD, and he is compliant with treatment recommendations by attending AA meetings, abstaining since 2016, and periodically consulting with an addiction specialist.

Applicant's last alcohol-related incident was in August 2011 while he was overseas in a stressful environment. He was separated from his family and AA support network. Applicant has shown significant improvement in multiple areas of his life. He has completed treatments, and has fully committed himself to a life of sobriety. Given his history of relapses, there is risk in granting a security clearance to Applicant. However, the risk is not unreasonable. Applicant has tremendous support from his family, church, colleagues and fellow AA participants. He has confronted his problem and he is coping with his affliction effectively.

Applicant has met his burden in establishing that sufficient time has elapsed since his last alcohol-related event, and he has taken responsible measures to insure that it never happens again. The above-mentioned mitigating conditions apply to dispel security concerns about Applicant's future alcohol use, although AG ¶ 23 (c) has only partial application due to his relapses. I have no doubts about Applicant's current reliability, trustworthiness, and good judgment. Alcohol consumption security concerns are mitigated.

### **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 Guideline G in this whole-person analysis. Applicant is a combat veteran who desires to continue serving the defense industry while raising a family of six children. His numerous character reference letters attest to his honesty, character and value to his community.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated the alcohol consumption 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:

Paragraph 1, Guideline G:	FOR Applicant
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Subparagraphs 1.a-1.f:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

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Robert J. Kilmartin  
Administrative Judge