



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-03020

**Appearances**

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

October 3, 2018

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant had three alcohol-related arrests between 2010 and 2015. He is currently on probation for the last arrest, and continues to drink. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 27, 2014. (Government Exhibit 1.) On October 5, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel*

*Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) with attachments on November 11, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 26, 2017. The case was assigned to another administrative judge on January 4, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 12, 2018. The case was reassigned to me on January 31, 2018. I convened the hearing as scheduled on February 6, 2018. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 13, 2018.

### **Findings of Fact**

Applicant is 45, divorced from his second wife, and has one child. He is seeking to retain a security clearance in connection with his work with the DoD.

Applicant served on active duty with the Air Force from 1993 through 1996, when he received an Honorable Discharge. He has worked for his present employer since 2005. (Government Exhibit 1 at Sections 13A and 15.)

#### **Paragraph 1 (Guideline G: Alcohol Consumption)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he uses intoxicants to excess. Applicant admitted having three alcohol-related arrests.

1.a. Applicant was first arrested for Driving Under the Influence (DUI) on April 16, 2010. He was convicted of DUI with blood alcohol .08% or higher on November 15, 2010. The sentence included court-ordered attendance at a nine month DUI class and three years on probation. Applicant submitted evidence showing he had completed the DUI course. (Government Exhibit 3; Applicant Attachments 1a-2, 1a-3, and 1a-4.)

Applicant has given two different versions of this event. In a written statement to his employer dated April 21, 2010, Applicant stated:

On the evening of April 15, 2010 at approximately 9 PM I went to a local bar to sing karaoke with some friends. On the way home my vehicle went off the road and got stuck in several piles of gravel. I was stranded in an unpopulated and out of the way location. I saw tail-lights of a semi trailer across the street and down the road approximately 60 to 100 yards. I went to request assistance and was denied. I returned to my vehicle trying to determine my next course of action. Shortly after, the police arrived as I was

standing outside my vehicle. The officer requested a breathalyzer and field sobriety test and I declined. The officer handcuffed me and took me to the police station. I was booked for a misdemeanor DUI. (Applicant Attachment 1a-1.)

Applicant had an interview with an investigator with the Office of Personnel Management (OPM) on March 14, 2014. During that interview Applicant stated that an unknown third person had driven Applicant's car into the ditch because Applicant was too intoxicated to drive. Applicant repeated this explanation in his testimony at the hearing. (Government Exhibit 6 at 3-4; Tr. 19, 26-29.)

1.b. Applicant had a second alcohol-related arrest on September 20, 2012. At this point he was still on probation for his 2010 DUI conviction. On that date Applicant and his second wife had a domestic argument after both had been drinking at a party. They engaged in a mutual shoving match and his wife fell on the bed. She stated she was going to call the police and he pulled the phone out of the wall. She yelled out the window for someone to call the police, and he pulled her in and shut the window. At that point Applicant left the house to cool off. The police arrived, spoke to Applicant and his wife, and arrested him. Applicant was subsequently charged with Domestic Violence (Battery of Spouse) and Prevent/Delay a Witness. Applicant was found guilty of count 1 on November 7, 2012, and was sentenced to attend a 52-week domestic violence course, one day in jail, and placed on probation for three years. He successfully completed the domestic violence course in January 2014. (Government Exhibits 4, and 6 at 4-5; Attachments 1b-1 through 1b-6; Tr. 19-20, 29-34.)

1.c. Applicant was arrested for DUI, his third alcohol-related incident, on or around August 7, 2015. At this time Applicant was still on probation for his second arrest. He admitted that on this date he was upset about his recent divorce from his second wife and drank too much before driving. He was convicted of DUI with blood alcohol .08% or higher on March 1, 2016. The adjudged sentence included probation for five years, a fine, and Applicant had to attend an 18-month alcohol education course. As of the date of the hearing Applicant was still on probation and had not yet completed the alcohol education course. (Government Exhibit 5, and 7 at 2-3; Attachments 1c-1 through 1c-4; Tr. 20-22, 35-36, 39-40.)

Applicant continues to drink on an occasional basis, having last drunk alcohol two days before his hearing. Applicant has drunk between six to eight beers over a 12-hour period at least once since his last arrest. He admitted that his drinking was stress-based, and the classes he is taking are helping him cope with that. He attended Alcoholics Anonymous meetings as required for his treatment, and continues to attend them as needed. Applicant admits having an issue with alcohol in the past, but does not believe he is currently an alcoholic or a problem drinker. (Tr. 43-50.)

## **Paragraph 2 (Guideline J: Criminal Conduct)**

The Government alleged in this paragraph that Applicant is ineligible for national security eligibility because he has engaged in conduct of a criminal nature. Applicant admitted both subparagraphs with explanations.

2.a The SOR alleged the three arrests discussed above under Paragraph 1 are also cognizable under this paragraph as criminal conduct.

2.b. Applicant admitted that a bench warrant was issued in February 2017 for his alleged failure to appear in court for a hearing, and also to provide proof of enrollment in the 18-month DUI program discussed under 1.c, above. Applicant first discovered a bench warrant had been issued for him when he received the SOR. He explained that he had a communication issue with the court concerning when he had enrolled in the course. Applicant provided documentation showing that he had enrolled in the course in May 2016, and he had a court hearing in November 2017, during which the warrant was recalled and Applicant's time to complete the course was continued until November 2018. Applicant has mitigated this allegation. (Government Exhibit 5; Attachments 1c-1 through 1c-4, 2b-1; Tr. 22-24, 36-38.)

## **Policies**

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (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, "Any 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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, “Any 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 *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline G: Alcohol Consumption)**

The security concern relating to the guideline 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 at AG ¶ 22 contains seven disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions possibly apply to the facts 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 has a history of drinking to excess, as shown by the three alcohol-related incidents set forth in the SOR and discussed above. The last incident was in August 2015, about a year and a half before the record closed in this case. He is on probation until 2021, and had not completed his court-ordered 18-month DUI course at the time of the hearing. He continues to drink alcohol, the last time being two days before the hearing. Both of the cited conditions apply.

The guideline at AG ¶ 23 contains four conditions that could mitigate alcohol consumption security concerns.

(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.

None of the mitigating conditions were completely established in this case. Applicant had three alcohol-related arrests, the last in August 2015. As stated, Applicant will be on probation until 2021, was still drinking, and had not finished the 18-month alcohol program as of the time of the hearing. He appears to have issues understanding or accepting his continuing problems with alcohol. Considering all the available evidence, I find that not enough time has passed without an incident to be sure that he will not resume drinking and acting irresponsibly while under the influence. The Alcohol Consumption guideline is found against Applicant.

## Paragraph 2 (Guideline J: Criminal Conduct)

¶ 30: The security concern relating to the guideline for Criminal Conduct is set out in AG

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Three conditions apply:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
- (c) individual is currently on parole or probation.

Applicant had three alcohol-connected criminal incidents between 2010 and 2015. He is currently on probation until 2021 for his last conviction for DUI.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

As stated, allegation 2.b is found for Applicant. Otherwise, Applicant had gone almost two years without an alcohol-related criminal incident as of the date of his hearing. However, as stated above, he does not seem to have understood the adverse impact his alcohol use and related criminal conduct have had on his personal life and career. Based on the available record, it is not possible to say with any certainty that alcohol-related criminal incidents will not happen in the future. Of particular concern is the fact that he is still on probation, and had not completed the 18-month DUI course. Not enough time has passed to make a positive decision in Applicant's favor. Guideline J is found against Applicant.

### **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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the security significance of his alcohol use and related criminal conduct. Overall, the record evidence does create substantial doubt as to Applicant's present eligibility and suitability for national security eligibility and a security clearance.



### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge