



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-03087
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

03/27/2018

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**Decision**

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KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the alcohol consumption security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 23, 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.

Applicant responded to the SOR on October 26, 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 November 21, 2017. 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 November 30, 2017. Applicant responded with an undated two-page letter, which was received by DOHA on January 12, 2018. The Government exhibits identified as Items 1 through 5 included in the FORM are admitted into evidence, without objection.

### Findings of Fact

Applicant is a 55-year-old engineer employed by a defense contractor since November 1989. He obtained an associate's degree in 1984 at a community college. He reports no military service and he has never been married.<sup>1</sup>

Applicant disclosed five alcohol-related arrests in the last 35 years, including driving while intoxicated (DWI), in section 22 (Police Record) of his Questionnaire for National Security Positions/Security Clearance Application (SCA) that he signed in October 2015. He admitted all of the allegations in SOR ¶¶ 1.a through 1.i of the SOR.<sup>2</sup> Applicant elaborated in his response to SOR ¶ 1.i, that his alcohol consumption since he had treatment in late 2013, is limited to a single glass of beer with his meal once a week.<sup>3</sup> His five alcohol-related arrests and subsequent convictions are confirmed by his FBI criminal history print-out.<sup>4</sup> The details of each incident are established there and in the SOR allegations that Applicant admitted to.

In his April 1, 1999 sworn and subscribed statement, Applicant stated he tried to monitor his drinking when he went out to clubs after his 1987 and 1993 DUI arrests.<sup>5</sup> He became depressed after breaking up with his girlfriend in 1995, and started drinking more heavily. When he was arrested for DUI in 1996, Applicant was still on probation from his 1993 conviction.<sup>6</sup> He was drinking at home most nights of the week.<sup>7</sup> He was ordered to attend treatment and diagnosed as alcohol dependent. Applicant stopped drinking completely following his 1996 DUI conviction. He sought treatment from a licensed clinical social worker (LCSW) in May 1997, attending weekly sessions for five or six months, and then monthly sessions until October 1998, when his court-ordered probation ended.<sup>8</sup> He abstained from using alcohol completely from fall 1996 to fall 1998.<sup>9</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Item 2.

<sup>3</sup> Item 2.

<sup>4</sup> Item 5.

<sup>5</sup> Item 4.

<sup>6</sup> Item 5.

<sup>7</sup> Item 4.

<sup>8</sup> Item 4.

<sup>9</sup> Item 4.

In late 1998, Applicant renovated his house by himself. When he completed this project, his neighbor invited him over to celebrate. Applicant had his first two beers since the fall of 1996. Applicant rejected his LCSW counselor's conclusions stating "I do not believe I am a problem drinker or an alcoholic" in a signed-sworn statement that he provided to an investigator in April 1999.<sup>10</sup> After his most recent arrest for DUI in spring of 2013, Applicant was diagnosed and treated again for alcohol dependence.<sup>11</sup> Despite his diagnosis, he resumed drinking two to three beers per week, mostly at home.<sup>12</sup>

In his November 2017 response to the FORM, Applicant stated that he intends to marry his long-term girlfriend soon. She has a master's degree in counseling. Due to her positive influence, he stopped drinking and obtained treatment in 2013. He did not drink during the six months of treatment, and for roughly two years following treatment. At some point, his girlfriend allowed him to have a single drink with dinner, once a week. That is why Applicant answered yes to questions about whether he continues to drink. He has worked for the same federal contractor for 28 years, and rose to the level of grade 4 electrical engineer. In November 2017, he stated that he needs a clearance for his occasional access to laboratories a couple of times per year. Applicant stated ". . . seeing my full record in front of me and addressing this and the statement of reasons made me realize that with my record, I do not deserve to have even an occasional drink. . . . So, I have begun to abstain from drinking alcohol."<sup>13</sup>

### **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 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.

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<sup>10</sup> Item 4.

<sup>11</sup> Item 2, and Item 3, at 28.

<sup>12</sup> Item 2 and Item 4.

<sup>13</sup> Response to FORM, p. 2.

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 most recent DUI arrest in May 2013, after completing treatment twice. 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 receiving treatment in 1997 for a condition diagnosed as alcohol dependence-alcohol abuse (SOR ¶ 1.f); and again in 2013. (SOR ¶ 1.h) 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>14</sup> He began consuming alcohol, with breaks as long as two years, from 1983 to present. In 1983, 1987, 1993, 1996, and 2013, he was convicted of DWI. He has been treated twice and diagnosed as alcohol dependent. He continues to drink alcohol, albeit moderately.

Several factors weigh against mitigation of alcohol consumption security concerns: (1) Applicant's five alcohol-related driving offenses; (2) his reluctance to forswear his alcohol consumption; (3) his binge alcohol consumption to the extent of becoming intoxicated repeatedly; (4) his diagnosis with alcohol dependence, alcoholism, or alcohol abuse; and (5) his rejection of his counselor's conclusions. He has completed treatment twice, yet he convinced himself it was fine to continue his alcohol consumption.

Applicant's last alcohol-related incident was in April 2013. Applicant has shown significant improvement in in multiple areas of his life. He has completed

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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.

treatments, but has not fully committed himself to a life of sobriety. He has admitted to continuing to drink alcohol at least up until October 2017. He has consumed alcohol, at times to excess, since approximately age 15 or 16. Given his history of relapses, an inference can be drawn that Applicant has not completely confronted his condition, and he is not fully coping with his affliction. Applicant has not 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 do not apply to dispel security concerns about Applicant's future alcohol use. I have lingering doubts about Applicant's current reliability, trustworthiness, and good judgment. Alcohol consumption security concerns are not mitigated.

## **7 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(a):

(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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not 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:	Against Applicant
Subparagraphs 1.a-1.i:	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 interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge