



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



In the matter of: )  
)  
) ISCR Case No. 18-00833  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

10/12/2018

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline G (alcohol consumption) and Guideline J (criminal conduct). Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 4, 2015. On April 10, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G and J. The DOD CAF acted 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 (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR on May 9, 2018, admitting the allegations in SOR ¶¶ 1.a and 1.c, and denying the allegations in SOR ¶¶ 1.b and 1.d. He also requested a hearing before an administrative judge. The case was assigned to me on July 20, 2018. On July 20, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 7, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. At the hearing, Applicant testified on his own behalf. DOHA received the transcript (Tr.) on August 15, 2018.

### **Findings of Fact<sup>1</sup>**

Applicant is 51 years old. He graduated from high school in 1986 and he enlisted in the Army in 1988. Applicant was married in 1990 and divorced in 2009. He married again in 2011, and he reports two grown daughters, a stepson, age 15, and a son, age 4. (Tr. 22, 26) He has been employed as a customer service representative by a federal contractor since 2014. He needs a clearance because he routinely handles personal identifiable information in helping veteran's access their benefits and programs. Applicant served honorably in the U.S. Army from 1988 to 2014, when he was medically discharged for Post-Traumatic Stress Disorder(PTSD). He has a Department of Veteran's Affairs (VA) disability rating of 90%. (Tr. 47) He deployed to Iraq for a period of combat operations, and to Kuwait twice. (Tr. 23) Applicant earned a Bronze Star Medal, two Meritorious Service Medals (MSMs), and several Army Achievement Medals (AAMs) during his service. He has residual medical problems and memory issues. (Tr. 24)

On May 4, 2015, Applicant signed a Security Clearance Application (SCA),<sup>2</sup> and in section 22 (Police Record) he disclosed an arrest for assault in March 2010. In section 24 (Use of Alcohol) he disclosed that he was ordered to seek alcohol counseling by his command because there was a false assertion by his girlfriend that alcohol was involved in the assault. (Tr. 18) The alcohol counselor screened Applicant and concluded that he did not need counselling or treatment. In his Answer to the SOR dated May 9, 2018, Applicant admitted the assault and requirement to consult with an alcohol counselor as alleged in SOR ¶ 1.a. He denied SOR ¶ 1.b, which alleges that Applicant was diagnosed with alcohol use disorder (AUD), moderate, in early 2015, and he declined out-patient, follow-up treatment. He testified credibly that he voluntarily self-referred for help with his drinking in 2015. (Tr. 24) He elected to have individual treatment with Dr. R. of the VA, rather than the group therapy being promoted by the medical clinic. (Tr. 25-26) His medical records confirm that he had treatments from January to April 2015.<sup>3</sup>

Applicant testified credibly that he had stopped drinking of his own volition on several occasions. (Tr. 32-33) The medical records indicate that during his "intake" for alcohol counseling, Applicant disclosed that he was previously drinking as much as 9 – twelve-ounce beers per day. He throttled back substantially and now he only drinks approximately a six pack on weekends. (Tr. 45) He last drank to the point of intoxication in February 2018. Although the medical records, at page eight, reflect a diagnosis of AUD,

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's May 4, 2018 Security Clearance Application (SCA) (GE 1) and his summary of clearance interview by a background investigator. (GE 3).

<sup>2</sup> GE 1.

<sup>3</sup> GE 4.

moderate in severity, Applicant was not aware of this diagnosis. (Tr. 41) It was never conveyed to him, and he was never told by medical professionals that he should stop drinking alcohol. (Tr. 34-35) Applicant completed 26 years of active duty with no alcohol related incidents. He did not decline follow-up treatment in April 2015. (Tr. 34)

JPAS entries (GE 5) reflect that Applicant was arrested on March 27, 2016, for assault, 4<sup>th</sup> degree, (domestic violence). Applicant testified consistent with his contemporaneous statements reflected in the JPAS entries, that he and his wife were arguing. No alcohol was involved. She tried to slam the door on him, and he reflexively reached out to stop the door from hitting him and accidentally hit her in the face. (Tr. 36, GE 5) She called the military police. On April 25, 2016, Applicant pled guilty to assault on advice of counsel and in order to continuing seeing his child. Although he did not intend to strike or harm her, he concluded that he would be found guilty anyway. (Tr. 37, GE 5) She had no injuries but went to the military hospital out of an abundance of caution.

Applicant was sentenced to six months in jail, which was suspended, and two years of probation. An emergency protective order issued, but the attorneys negotiated visits for him to see his four-year old son in exchange for his guilty plea. Applicant also paid a fine, and he has completed all terms of his probation including 28 domestic-violence or anger-management classes. (Tr. 38-39) Currently, he is on good terms, living with his wife, and they are raising their young son together. Applicant was not recommended to attend Alcoholics Anonymous ("AA") meetings or an alcohol and substance abuse program (ASAP) since it was not deemed necessary.

## **Policies**

DOD took action in this case 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, 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(a),

the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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. Under Directive ¶ E3.1.15, 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 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**

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:

(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; and

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

Applicant had no alcohol-related incidents in 26 years of active duty and multiple deployments. His wife falsely asserted that alcohol was somehow involved in his March 31, 2010 arrest. Thus, his command reflexively required Applicant to have alcohol counseling. Later, after suffering from the effects of combat tours, he appropriately self-referred for help because he wanted his wife to see that he was reducing his drinking. In 2015, he was diagnosed with alcohol use disorder (AUD), moderate, based on his voluntary disclosures that he was drinking nine 12-ounce beers per day. He complied with all recommendations for treatment. This diagnosis was either not conveyed to him, or he does not remember it, but Applicant disclosed his continuing moderate use of alcohol in his answers to interrogatories and in his testimony. AG ¶¶ 22(d), and (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 judgment; and

(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.

Applicant had no alcohol-related arrests. He was only diagnosed with AUD after he voluntarily sought help, which is to his great credit as a decorated combat veteran. He has completed all recommended lifestyle adjustments and reduced his alcohol intake. An inference can be drawn that Applicant has confronted his proclivity for alcohol, and he is appropriately coping with his diagnosed disorder. He has met his burden in establishing that his excessive drinking occurred under unusual circumstances, and that it is unlikely to recur. It does not cast doubt on his trustworthiness, reliability or judgement. Applicant has dramatically reduced his consumption. He has taken responsible measures to insure that it doesn't get out of control. The above-mentioned mitigating conditions apply with respect to SOR ¶¶ 1.a - 1.d.

## **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30 as follows:

Criminal activity creates doubt about an Applicant'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 notes conditions that could raise security concerns under AG ¶ 31. The disqualifying conditions potentially applicable in this case include:

31(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 and trustworthiness; and

31(b) evidence of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant has admitted to two arrests for domestic violence. The above disqualifying conditions are applicable.

AG ¶ 32 provides conditions that could mitigate security concerns. The following are potentially applicable:

32(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; and

32(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.

My analyses above under administrative Guideline G is the same under this administrative Guideline J, and is herein incorporated by reference. Applicant has completed all prescribed requirements and had counselling. More than 30 months have elapsed since his last arrest, and he and his wife (victim) continue to live together harmoniously. AG ¶¶ 32 (a) and (d) apply to mitigate the cross-alleged allegations at SOR ¶¶ 2.a.

### **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 Guidelines G and J in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Notably, Applicant has served honorably in the Army for 26 years, is highly decorated, and is suffering the lingering effects of combat. He has completed counseling and any other requirements. Most importantly, Applicant resolved the specific violations alleged in the SOR and he has curtailed his consumption of alcohol.

### **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
Subparagraphs 1.a -1.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

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Robert J. Kilmartin  
Administrative Judge