



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



In the matter of: )  
)  
) ISCR Case No. 07-08809  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Virginia M. Gomez, Esq.

March 26, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

On November 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G, Alcohol Consumption. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 5, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on January 3, 2008. 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 January 14, 2008, responded through counsel on February 12, 2008, and submitted Exhibits (Ex.) A through N. Department Counsel did not object to Applicant's response. I received the case assignment on March 4, 2008.

### **Findings of Fact**

In his Answer to the SOR, dated December 5, 2007, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 50-year-old engineer for a defense contractor. He is a college graduate. He has been with his current employer since 1995, and his previous company from 1988 to 1995. Applicant has worked on the same program and has held a security clearance for more than 20 years. He has never been married and has no children.<sup>1</sup>

Applicant started drinking alcohol when he was about 17 years old. He stated that he would normally drink between about two to four beers about twice a month. In his response to the FORM, Applicant described his drinking in college as primarily beer, and primarily on the weekends. He stated he generally only drank two beers at a time but sometimes would drink as many as four.<sup>2</sup> In a handwritten statement provided on March 13, 1987, Applicant described his drinking while in college somewhat differently:

Regarding my alcohol usage. While I was a student in the last year of college I had anxieties about graduating and my future which led to me drinking approximately three nights a week between the period of DEC 85 and JAN 86. I would drink approximately 4 drinks a night, rum and coke at local bars in the [-----] area. Drinking made me feel not [illegible] and I would get verbal at times. I always felt bad the next morning. I would have drank seven nights a week if I had the money. Upon knowing I was going to graduate I curtailed my alcohol drinking because I no longer needed to drink into excess anymore. I feel I do not now have an alcohol drinking problem and I currently drink one plum brandy, four days a week at the most. . . Regarding my alcohol usage I enjoy taking an alcohol drink in the evening to help me relax but I do not get intoxicated nor do I have any future intent on doing so.<sup>3</sup>

Applicant had two alcohol-related arrests in the 1980s. He was charged with public drunkenness in 1982, when he was 24 years old. He stated that he drank about two rum and cokes in a bar and felt sick. He went outside to throw up. He was arrested while he was getting sick. He completed a diversion program after which the charge

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<sup>1</sup> Ex. 4, A, M.

<sup>2</sup> Ex. 5, A.

<sup>3</sup> Ex. 6.

was dismissed. His next incident occurred in 1986. Applicant was 28 years old at the time and in his last year of college. He was again arrested and charged with public drunkenness. He pled guilty and was given probation, which he successfully completed. In his response to the FORM, he stated that he had been drinking after the last day of classes and finally finishing school. He stated he “was arrested when the police found [him] arguing with someone outside the dorms on campus.”<sup>4</sup> He described his arrest in greater detail in his 1987 statement:

I was drinking in a bar in [-----] and drank about 4 rum and cokes. I don't remember leaving because I must have had periods of blackouts. I do remember walking home and I saw a girl on a balcony of an apartment house. Upon seeing her I started shouting to her about President Reagan being a teflon president and how I felt it was illegal for the United States to be involved in Nicaragua. Shortly an [-----] Police unit rolled up and arrested me [for] being a public nuisance and being drunk in public.<sup>5</sup>

Applicant was arrested on May 29, 2005, and charged with (1) Driving Under the Influence (DUI) and (2) Driving Under the Influence with 0.08% or Higher Blood Alcohol. He pled guilty on August 24, 2005 to the first charge. Judgment was withheld for 36 months; he was given 36 months of probation; he was ordered to a First Offender Alcohol Program; and he was ordered to pay restitution, a fine, and court costs. The second charge was dismissed. In addition to the First Offender Alcohol Program, Applicant was required to attend six Alcoholics Anonymous meetings within three months. He voluntarily attended 36 meetings. He attended approximately 20 classes and completed the First Offender Alcohol Program in October 2005. Applicant, through his criminal attorney, petitioned the court on January 25, 2008 to permit him to withdraw his guilty plea, or that the finding of guilty be set aside and a plea of not guilty be entered and the court dismiss his action. The court had not acted on the petition as of February 12, 2008, the date Applicant responded to the FORM.<sup>6</sup>

Applicant was vacationing at a cabin when he was arrested. He began watching the Indianapolis 500 car race by himself. He started drinking alcohol while watching the car race. He estimated that he drank four ten-ounce drinks that contained vodka and soda over about a four hour period. At about 3:30 in the afternoon, he decided to drive to a nearby lake and take his dog for a walk. He stated that he felt he was competent to drive. Applicant struck another car. There was damage to the vehicles but no injuries. Police arrived and Applicant was given a field sobriety test and a breathalyzer which tested at .27% blood alcohol content (BAC). In his response to the FORM, Applicant stated that he never would have driven had he known he was that impaired and he clearly underestimated the impact of the amount of alcohol he ingested over the given

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<sup>4</sup> Ex. 3, 5, 6, A.

<sup>5</sup> Ex 6.

<sup>6</sup> Ex. 3, 5, 7, A, I, J. The allegation states the arrest was on May 24, 2005. Court records indicate the violation occurred on May 24, 2005, but the DMV record submitted as Ex. J indicates Applicant was arrested on May 29, 2005.

time frame. In his response to the SOR, Applicant stated the DUI occurred under the “unusual circumstance” of mourning for his deceased father and not being able to enjoy the race, a traditional family event. No information was submitted as to when his father passed away.<sup>7</sup>

Applicant described his drinking to a background investigator on August 10, 2006. A statement was not provided but the interview was summarized in a Report of Investigation (ROI). He was sent Interrogatories containing the ROI and was asked if the ROI accurately reflected the information that he provided to the investigator. He certified on September 21, 2007 that it did. He was provided an opportunity to add additional information regarding the matters discussed during his interview but chose not to add anything. Applicant described his alcohol consumption at that time as three to four times a week and that on two of the four occasions he would drink more than two drinks. He normally drank vodka and soda in a 12-ounce glass with ice, which included a couple ounces of alcohol. He stated that he usually drank while alone watching television. He did not feel he had a problem with alcohol and he intended to drink in moderation and never to drink and drive.<sup>8</sup>

In his response to the FORM dated February 8, 2008, Applicant stated that his drinking habits became more moderate during the last year. His drinking was down to one or two drinks on any particular occasion, once or twice a month. He took responsibility for his DUI and his alcohol-related offenses in the 1980s. He stated:

I now understand that I should only consume alcohol in extreme moderation and never to the point of intoxication, which means I should not drink more than two drinks on any single occasion.<sup>9</sup>

Applicant submitted numerous letters from supervisors and co-workers who have known him for many years. He is described as a highly competent engineer, who is dependable, responsible, reliable, trustworthy, and honest. They are aware of the basis of the SOR, but none have ever seen other evidence of an alcohol problem. They recommend him for a security clearance. His most recent performance appraisal was excellent. His security officer verified that Applicant has held a security clearance for many years without a violation.<sup>10</sup>

## **Policies**

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

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<sup>7</sup> Ex. 3, 5, A.

<sup>8</sup> Ex. 5.

<sup>9</sup> Ex. A.

<sup>10</sup> Ex. B-H, L.

potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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." 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant 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 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 information.

Section 7 of Executive Order 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 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 notes several conditions that could raise security concerns under AG ¶ 22. Two 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 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.

Applicant's drinking habits and alcohol-related arrests are sufficient to raise the above potentially disqualifying conditions.

Four Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a)-(d) 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 a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; 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.

Applicant had two alcohol-related arrests when he was in his 20's. His DUI in 2005 is the only alcohol-related incident in more than 20 years. He has not been

diagnosed as alcohol dependent or as an alcohol abuser; although his actions clearly indicate he has abused alcohol. Applicant acknowledged that his alcohol use caused him legal and professional problems. He attended approximately 20 classes and completed his First Offender Alcohol Program. He was ordered to attend six Alcoholics Anonymous meetings, but he voluntarily attended 36 meetings. He has reduced his drinking to one or two drinks, once or twice a month. AG ¶ 23(b) is applicable and AG ¶ 23(a) is partially applicable. The remaining mitigating conditions are not 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 the 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) 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 common sense 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. Applicant had two alcohol-related arrests in the 1980s and a DUI in May 2005. The DUI was his only alcohol-related incident in more than 20 years. Other than the obvious consequences directly associated with the DUI, alcohol has not negatively affected his professional career. He has worked on the same program and has held a security clearance for more than 20 years, without a security violation. He is very highly regarded by his supervisors and co-workers, who are fully aware of his alcohol-related incidents, have never seen any other indication of an alcohol problem, and recommend him for a security clearance. Applicant continues to drink alcohol, but only in moderation.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his alcohol consumption.

### **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

### **Conclusion**

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

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Edward W. Loughran  
Administrative Judge