



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-09124
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: Gregg D. McCormick, Esq.

April 7, 2008

**Decision**

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LAZZARO, Henry, Administrative Judge

Applicant failed to mitigate the security concern caused by his alcohol consumption.

On November 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G (alcohol consumption). Applicant's response to the SOR was submitted to DOHA on December 26, 2007. Applicant admitted all SOR allegations and requested a hearing.

The case was assigned to me on January 18, 2008. A notice of hearing was issued on January 29, 2008, scheduling the hearing for February 21, 2008. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were

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<sup>1</sup> This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), and revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

marked as Government Exhibits (GE) 1-6, and admitted into the record without objection. Applicant testified and submitted thirty documentary exhibits that were marked as Applicant Exhibits (AE) 1-30, and admitted into the record without objection.<sup>2</sup> The record was held open to allow Applicant to submit additional documents in support of his case. One document with a cover letter was timely received, marked as AE 31, and admitted into the record without objection. Department Counsel's forwarding letter was marked as Appellate Exhibit (App. Ex.) I, and included with the record. The transcript was received on March 4, 2008.

### **Procedural Issues**

Department Counsel moved at the hearing to amend the SOR by correcting Applicant's listed social security number, the location of treatment alleged in subparagraph 1.h, and the state where the Army post is located as alleged in subparagraph 1.i. Each amendment was made on the face of the SOR without objection.

### **Findings of Fact**

After a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is 58 years old and has been employed by a series of defense contractors, currently as a senior budget analyst, since February 1991. He served on active duty in the U.S. Army from May 1970, until his retirement in May 1990. He was a Chief Warrant Officer 2 when he retired and had attained the rank of Sergeant First Class (paygrade E-7) before he was selected for the warrant officer program. Applicant primarily served with special forces commands during his Army career. His awards include the Legion of Merit, Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal, and Combat Infantryman Badge. He also earned the noncommissioned officer professional development ribbon, scuba diver badge, special forces tab, and master parachutist badge.

Applicant submitted numerous letters of recommendation from supervisors, coworkers, senior military officers, his wife, and one of his siblings. He also submitted numerous employment performance evaluations and certificates of commendation. Those persons and documents overwhelmingly establish that Applicant is an exceptionally valued employee who has earned a reputation as a hard-working, reliable and trustworthy individual. The persons who submitted the letters of recommendation, despite being fully aware of the SOR allegations, most strongly recommend he be allowed continued access to classified information. Applicant has possessed a security clearance at the top secret level since approximately 1973. With the exception of a seven-day period when he was barred from the workplace following a January 2007 alcohol-related workplace incident, no other adverse action has been taken to revoke or downgrade his security clearance.

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<sup>2</sup> Department Counsel did voice an objection to AE 1 being considered as establishing a mitigating condition under an unrelated guideline or for any purpose other than what impact it might have on consideration of the "whole person" concept under the terms of the Directive. The exhibit was admitted for the limited purposes as stated in the transcript. (Tr. pp. 40-41)

Applicant has been married since April 1975. He has four adult children from that marriage. His youngest child, a 24-year-old son, is the only child still residing with Applicant and his wife. Applicant's wife is employed as an adjunct faculty member at a local college. Applicant also is employed part-time as an adjunct faculty member at a local college. They are financially secure. He earned a bachelor's degree while serving in the Army and an MBA in December 1996.

Applicant was charged with Driving Under the Influence (DUI) on board an Army base in March 1973. He was punished under Article 15, Uniform Code of Military Justice (UCMJ), fined \$75, and lost his on-base driving privilege. In 1988, Applicant was sent back to an Army base in the United States from an overseas assignment for alcohol treatment because of his own concern about his pattern of alcohol use. (Tr. pp. 62-63) He underwent outpatient treatment from November 23, 1988 to April 23, 1989, was diagnosed as alcohol abusive, and received a prognosis for successful rehabilitation. After completing the treatment, Applicant remained alcohol abstinent "(F)or quite a period of time." (Tr. p. 63)

In July 1996, Applicant was confronted by his employer because a co-worker reported his suspicion that Applicant was consuming alcohol at work. Applicant denies being intoxicated but does admit to going out to his automobile prior to being confronted and consuming alcohol. Applicant was given the ultimatum of obtaining alcohol treatment or losing his job. He received seven days of inpatient treatment, followed by four weeks outpatient treatment, and was diagnosed by a physician as being alcohol dependent and having an adjustment disorder. (GE 5) Applicant attended alcoholics anonymous (AA) meetings as part of the outpatient program and for a short while afterwards. (Tr. pp. 66-67) He again "stayed abstinent for quite a while. . . ." (Tr. p. 68)

Applicant was charged with DUI in January 2004. He admits he was sitting in an airport parking lot drinking alcohol in a rental vehicle before boarding a flight home after a work-related trip. His blood alcohol concentration (BAC) was 0.233 when he was arrested. He was found guilty of the DUI and sentenced to 12 months probation, fined \$500, and ordered to perform 50 hours community service and attend a DUI course. He also had his driving privilege restricted and an interlock system installed on his vehicle. Applicant paid an additional \$500 in lieu of performing the community service. He successfully completed all terms of the probationary sentence and it was terminated after only six months.

Applicant collapsed at work on January 24, 2007, suffering from what he describes as alcohol dehydration. He admits to leaving his work place and consuming alcohol at his car before collapsing. He was taken from his work place to a hospital, resided in an inpatient detoxification program from January 26-30, 2007, and received outpatient treatment for alcohol dependence from January 31, 2007 to March 1, 2007.

Applicant testified he has not consumed alcohol since January 26, 2007. He explained the only reason he consumed alcohol at all following the January 24, 2007 incident was because he had been advised by a nurse at the program not to enter the treatment program "cold turkey". (Tr. p. 61) He successfully completed the program at a state licensed substance abuse treatment center under the clinical care of a medical doctor and licensed mental health counselor. His prognosis from the program is excellent that he

can sustain sobriety and that he shows no warning signs for potential relapse or diverting from his after-care plan.

Applicant admits he is an alcoholic. He attends AA meeting a couple of times a month and several months before the hearing acquired an AA sponsor who he periodically contacts. He begins each day by reading religious based AA literature and he has resumed regular attendance at religious services. He has little to no contact with people who are consuming alcohol and does not have alcohol in his residence. Applicant is committed to remaining alcohol abstinent for the remainder of his life.

## POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying conditions and mitigating conditions for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G (alcohol consumption) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>3</sup> The government has the burden of proving controverted facts.<sup>4</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence,<sup>5</sup> although the government is required to present substantial evidence to meet its burden of proof.<sup>6</sup> "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."<sup>7</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>8</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>9</sup>

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<sup>3</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>4</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>5</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>7</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>8</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

No one has a right to a security clearance<sup>10</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>12</sup>

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## Analysis

### Guideline G, Alcohol Consumption

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. (Adjudicative Guideline [AG] ¶ 21)

Applicant received punishment under Article 15, UCMJ in 1973 for an on-base DUI. He was convicted of DUI in 2004. His 0.234 BAC following the 2004 arrest substantiates that he was grossly intoxicated at the time. He was returned to the U.S. from an overseas Army assignment in 1988 because of his own concern about his drinking and attended an outpatient alcohol treatment program. In 1996, he was required to attend an alcohol program because of concern about his on-the-job alcohol use in order to retain his employment. He passed out at work in 2007 after drinking in his vehicle while working. He attended alcohol treatment programs in 1988, 1996, and 2007, and has been diagnosed as alcohol dependent.

Disqualifying Conditions (DC): 22(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*; 22(b): *alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*; DC 22(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*; DC 22(d): *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*; DC 22(f): *relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol treatment rehabilitation program* all apply.

Applicant had undertaken an alcohol abstinent lifestyle for about 13 months as of the date of the hearing, just as he did following successful completion of alcohol programs in 1988 and 1996. He is obviously committed to remaining sober and maintaining abstinence. He now admits he is an alcoholic, he occasionally attends AA meetings, he has acquired an AA sponsor, he regularly attends religious services, and he daily reads

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<sup>10</sup> *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> *Id* at 531.

<sup>12</sup> *Egan*, Executive Order 10865, and the Directive.

religious based AA reading material. Mitigating Condition (MC) 23(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) applies.*

Applicant also recently obtained a very favorable prognosis from the 2007 program he completed under the clinical care of a physician. Thus, he is entitled to application of MC 23(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 meeting 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.*

The relatively short period of time that has passed since Applicant's last alcohol-related incident and treatment, coupled with the history of prior alcohol-related incidents, treatments, and relapses precludes application of MC 23(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;* or MC23(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.*

The whole person concept weighs heavily in Applicant's favor. His successful military and civilian careers, residential and family stability, financial security, and outstanding letters of recommendation, employment appraisals, and other certificates of commendation clearly demonstrate he has earned a reputation as a dependable, respected, and trustworthy individual. There is no reason to think he would ever intentionally do anything contrary to the interests of the United States.

Nevertheless, the objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Further, it must once again be noted that any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.

Applicant has a lengthy history of repeated alcohol-related incidents, successful completion of alcohol treatment programs and relapses. Two of the alcohol-related incidents occurred in the work place while Applicant possessed a top secret security clearance and either had or could have had access to classified information. He is aggressively pursuing a lifestyle of sobriety and alcohol abstinence and doing almost everything that could be asked of him to maintain that lifestyle.

Still, it has only been a little over a year since the last incident and during which he has remained sober and abstinent. Considering the two prior treatments which were each followed by abstinent periods of “quite a while” in the words of Applicant, it is simply too soon to be able to safely predict that another relapse will not occur. The risk of even the inadvertent compromise of classified material in the event of another relapse and as evidenced by Applicant’s two previous work place incidents is too great to permit a finding that Applicant has mitigated the alcohol consumption security concerns that exist.

Accordingly, and considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to mitigate the security concerns caused by his alcohol consumption. He has failed to overcome the case against him in this regard or satisfy his ultimate burden of persuasion. Guideline G is decided against Applicant. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **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-i:           Against Applicant

### **Conclusion**

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

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Henry Lazzaro  
Administrative Judge