



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



In the matter of: )  
)  
) ISCR Case No. 07-09746  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

May 18, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated alcohol consumption, financial considerations, and criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption), F (financial considerations), and J (criminal conduct). The action was taken under Executive Order (EO) 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on October 15, 2010, and November 29, 2010, 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 March 10, 2011. 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 March 22, 2011. He answered the FORM on April 5, 2011.<sup>1</sup> He did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to the documents in Applicant's response, and they are admitted as exhibits (AE) A and B. The case was assigned to me on April 26, 2011.

### Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since 1990. He served on active duty in the U.S. Navy and the Navy Reserve from 1982 until he was honorably discharged in 1990. His Questionnaire for National Security Positions (SF 86), submitted in May 2007, listed that he attended college for a period but it does not reflect that he earned a degree. He is married with two children, ages 23 and 16.<sup>2</sup>

In February 2002, Applicant was arrested and charged with driving under the influence of alcohol (DUI). In July 2002, he pleaded *nolo contendere* and was found guilty. He was sentenced to community service, probation for six months, ordered to attend DUI school, his driver's license was suspended for six months, and he had to pay court costs.<sup>3</sup>

In May 2003, Applicant was stopped at 1:49 in the morning after a police officer saw Applicant's car swerve several times and cross the center line. The officer noted that Applicant's eyes were bloodshot and glassy, and there was a strong odor of alcohol coming from the inside of the car. Applicant told the officer that he had three beers, but he drank some coffee, and he felt that he would be fine to drive home. The officer noted that Applicant "displayed signs of impairment" during the field sobriety test. Applicant refused to take a breath test. Applicant was arrested again and charged with DUI. The case was *nolle prossed*.<sup>4</sup> Applicant explained his version of the arrest in a June 2005 response to a DOHA SOR:

The refusal of the breathalyzer was done under the advice of my attorney, [name, address, and telephone number], with extenuating circumstances. The consummation [sic] of alcohol was in the amount of one swallow from a bottle of beer which was then subsequently spilled on me by the waitress, [first name], who bumped my table while serving other patrons.

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<sup>1</sup> Applicant's answer contained ambiguous language that could be interpreted as a request for a hearing. I asked Department Counsel to contact Applicant and ascertain whether he wanted a hearing. Applicant informed Department Counsel that he still wanted a decision on the written record.

<sup>2</sup> Items 4, 19; Applicant's response to FORM.

<sup>3</sup> Items 2, 5, 8; Applicant's response to FORM.

<sup>4</sup> Items 2, 6-8.

Shortly thereafter I left the establishment to return home because the designated driver called and said that she was not able to come. While on the way home I dropped some pretzels on the floor under my feet. While trying to sweep the debris from under my feet, I swerved and my driver's side tires crossed the lane marker which is why I was pulled over by a rookie policeman. He did smell beer in my car mostly because I was wearing a full can. I immediately called my attorney who instructed me not to succumb to a breathalyzer and to refuse all sobriety tests. I was nervous and followed the advice of my counsel. The details were explained to my counsel and I was told not to worry that the charges would be thrown out of court. I followed the advice of my attorney. I also suffered a back injury which made it very difficult to walk around. The back injury was caused while washing my neighbors' dog earlier that day. The charges were nolle [prossed] and I paid no more attention to the matter."<sup>5</sup>

A DOHA administrative judge revoked Applicant's security clearance on March 31, 2006, under the guidelines for alcohol consumption, personal conduct, and criminal conduct.<sup>6</sup>

Applicant was arrested In February 2009 and charged with DUI. In July 2009, he was found guilty of the lesser charge of reckless driving. He was sentenced to community service, probation, and he had to pay a fine and court costs.<sup>7</sup>

Applicant was required to remain sober as part of his probation. He stated that he passed the monthly screening tests imposed by the court. He completed a state-required 21-hour alcohol substance abuse education course and a driver improvement course. He also received alcohol counseling from the Department of Veterans Affairs (VA).<sup>8</sup>

The SOR alleges delinquent debts of \$214 and \$1,412, and a judgment of \$12,978 that was awarded against Applicant for a credit card company in December 2009. Applicant admitted that he owed the delinquent debts and the judgment. In his response to the SOR, he stated he was unaware of the \$214 debt to a telephone company alleged in SOR ¶ 2.b, but he would "resolve that immediately."<sup>9</sup> He wrote about the \$1,412 delinquent debt and the \$12,978 judgment in his response to the SOR:

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<sup>5</sup> Item 17.

<sup>6</sup> Items 16-18. I am considering this information for the sole purpose of establishing that Applicant was aware that alcohol-related incidents could adversely impact his security clearance.

<sup>7</sup> Items 2, 10.

<sup>8</sup> Items 2, 9; Applicant's response to FORM; AE B.

<sup>9</sup> Item 2; Applicant's response to FORM.

I am legally responsible for [debts alleged in SOR ¶¶ 2.a and 2.c] and I am not disputing the amounts. What I will make you aware of is the fact that my “wife”, my trusted life partner, has a problem with hoarding. The amounts on these accounts come from credit card balances that my wife incurred and then transferred into these accounts to which I am legally responsible for to date. As I have spoken to a divorce attorney and under his advice I have not paid those balances because I think in some time to come I can prove that those debts were not incurred by me and will become the sole responsibility of the soon to be my former wife. What proof of this I have right now? None, but hopefully when you read this you will be able to understand my difficult position. Eventually this will be cleared up, I promise.

When he responded to the FORM, Applicant stated that he had denied his wife’s access to his bank accounts, so she will no longer be able to incur debts without his authorization. He enrolled in credit counseling, and he submitted a debt management company’s activation form for him to enroll in the company’s “credit card balance mediation program.” He did not provide proof of any payments toward his judgment and delinquent debts.<sup>10</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.

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.

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

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<sup>10</sup> Applicant’s response to FORM; AE A.

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.

Applicant was arrested and charged with DUI in 2002, 2003, and 2009. His alcohol-related incidents raise AG ¶ 22(a) as a disqualifying condition.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. 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 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's most recent alcohol-related incident occurred in February 2009. He was required to remain sober as part of his probation. He completed a state-required 21-hour alcohol substance abuse education course and a driver improvement course. He also received alcohol counseling from the VA. He did not address in his response to the FORM whether he is currently drinking. I find that Applicant's alcohol-related incidents are recent, did not happen under unusual circumstances, and I am unable to determine that they are unlikely to recur. Applicant's alcohol-related incidents continue to cast doubt on his reliability, trustworthiness, and good judgment. Applicant did not submit sufficient evidence to establish any of the mitigating conditions.

### **Guideline J, Criminal Conduct**

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

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's three alcohol-related driving offenses are sufficient to raise the above disqualifying conditions.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (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 person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant was convicted in 2002 and 2009. His statement that he was innocent of the 2003 charge is not credible, and it is not supported by the police report and the arresting officer's account of the incident. I find there are no applicable mitigating conditions under the same rationale discussed under the alcohol consumption guideline.

#### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant blamed his wife for his financial problems. Her actions could qualify as conditions that were outside his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant promised to pay the \$214 debt to a telephone company, which he admitted was his responsibility. He provided no evidence that he did so. He stated that he hoped to eventually be absolved of liability for the other debts, but the largest debt has already been adjudicated by a court, and a judgment was awarded against him. I find that Applicant did not act responsibly and make a good-faith effort to repay or otherwise resolve his delinquent debts. He received some financial counseling, but his finances are not under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. There are no applicable mitigating conditions.

### **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 Guidelines G, F, and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's honorable service in the U.S. Navy and his long employment with a defense contractor. However, he has three alcohol-related arrests, the last occurring after his clearance was revoked in part for his previous two arrests. He also has unresolved delinquent debts.

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 alcohol consumption, financial considerations, and criminal conduct 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.c:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	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 a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge