



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-03160
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Pro Se

March 28, 2008

**Decision**

HENRY, Mary E., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on March 16, 2006. On October 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and J for Applicant. 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 acknowledged receipt of the SOR on November 5, 2007. He answered the SOR in writing on November 23, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 23, 2008, and I received the case assignment on January 25, 2008. DOHA issued a notice of hearing on February 12, 2008, and I convened the hearing as scheduled on March 6, 2008. The government offered four exhibits (GE), marked 1 through 4, which were

received without objection. Applicant and two witnesses testified on his behalf. He submitted four exhibits (AE), marked A through D, which were received without objection. DOHA received the transcript of the hearing (Tr.) on March 14, 2008, and the record closed on the same day. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Procedural and Evidentiary Rulings**

#### **Notice**

The file indicates that Applicant received the hearing notice on February 21, 2008, less than 15 days before the scheduled hearing date. (Tr. at 9.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. *Id.*

#### **Findings of Fact**

In his Answer to the SOR, dated November 23, 2007, Applicant admitted all the factual allegations in the SOR,

Applicant, who is 43 years old, works for a Department of Defense contractor as a production controller. He began work for this contractor in 1983. Since that time, he graduated from apprentice school in 1988 as a pipe fitter and completed his Associate of Arts degree in science in 1997. He has held a security clearance since 1985, without incident.<sup>1</sup>

Applicant married in 1987. He and his wife separated in 2001 and divorced in 2003. He has a daughter, age 12, and a son, age 10. Although his children live with his ex-wife, he regularly visits them. Because he and his wife continue to disagree over issues related to the children, he currently participates in a family counseling program with his children and sometimes his ex-wife. Through this program, they are learning to interact with each other in a different way.<sup>2</sup>

Shortly after he graduated from high school, Applicant began smoking marijuana occasionally with friends at parties about once a month. He also began drinking regularly. Before he married, he drank a couple of beers every night or every other night.<sup>3</sup>

In 1985, he and friends drank beer for a period of time. He then drove his car. The police stopped him because he was speeding. The police officer smelled alcohol

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<sup>1</sup>GE 1 (Applicant's security clearance application, dated March 16, 2006) at 1, 6, 25; Tr. 25-26.

<sup>2</sup>GE 1, *supra* note 1, at 9-10, 12-13; Tr. 27, 56-59.

<sup>3</sup>Tr. 27, 29-33.

and performed a breathalyzer test. Applicant thinks his blood-alcohol was around .13. The police officer charged him with driving under the influence (DUI). He pled guilty to DUI. The court sentenced him to attend an alcohol education program.<sup>4</sup>

One year later, in 1986, the police again stopped him for speeding. He had been drinking beer with friends. The police officer smelled beer and administered a breathalyzer test. Applicant thinks his test result was again a .13. The police officer issued a second DUI citation. He pled guilty to DUI. The court sentenced him to attend a substance abuse education program and restricted his driving privileges for one year.<sup>5</sup>

After he married in 1987, Applicant continued to drink at a modest level. From 1990 until 1996, he worked the second shift for his employer. During this time, he did not frequent bars nor did he drink at home after work.<sup>6</sup>

He and his ex-wife argued one evening in June 1993. She wanted to go out of the house for entertainment. He wanted to stay home and do his school work. His ex-wife blocked his entrance or exit from the room where they were arguing. He “overreacted” and kicked her in the shin. She called the police, who arrested and charged him with assault and battery. The court entered a finding similar to probation before judgment, and directed he and his ex-wife to attend marital counseling, which they did for six months. The court never entered a verdict against him on these charges.<sup>7</sup>

In 1996, he returned to working the day shift. He began drinking alcohol again - two or three beers every other day at home or in bars. Over the next one to two years, he increased both the quantity and the frequency of his alcohol consumption. By 1998, he drank at least four to six beers on a daily basis. At this time, he attributed his increased alcohol consumption to problems in his marriage.<sup>8</sup>

Applicant and his ex-wife fought again in July 1999 after he had been drinking alcohol. He walked into their bedroom and laid down on the bed, intending to go to sleep. She argued with him about his condition (meaning his condition after drinking alcohol). At some point, he grabbed a chair and threw it over his head, not looking behind him. The chair hit his wife. At this point, she wanted to leave the house. He pleaded with her to stay and would not allow her to leave. The police arrived at their house at some point, and charged him with assault and kidnaping. They appeared in

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<sup>4</sup>GE 1, *supra* note 1, at 23; Tr. 34-36.

<sup>5</sup>GE 1, *supra* note 1, at 22-23; Tr. 36-37.

<sup>6</sup>Tr. 30-33.

<sup>7</sup>GE 2, (United States Department of Justice, Federal Bureau of Investigation, criminal records report) at 2; Tr. 37-39.

<sup>8</sup>Tr. 30-33.

court at a later date. The court made no finding of guilt. Instead, the court entered a finding similar to probation before judgment, contingent upon completion of counseling for alcohol and family relationships. He completed the counseling as required.<sup>9</sup>

In August 2000, the police stopped Applicant for a traffic violation. As a result of the stop, the police charged him with possession of marijuana and DUI, based on a breathalyzer result of .08. At his court hearing, the State nol prossed the DUI charge. The court found him guilty of possession of marijuana (first offender) and directed him to attend the same substance abuse program he had previously attended and restricted his driving privileges for a time. Applicant attended an alcohol and drug abuse program for a year. He acknowledged he relapsed after this program but finally quit using marijuana in 2002. He no longer associates with his friends who smoke marijuana. He, however, continued to drink.<sup>10</sup>

Less than two years later, in June 2002 after an evening of drinking beer with friends, the police again arrested Applicant for DUI and reckless driving. The police observed him parked in his car in a parking lot. When the police arrived at his car, they noticed the keys in the ignition. The breathalyzer test revealed a blood-alcohol level of .13. The State nol prossed his DUI charge. The court found him guilty of reckless driving and fined him.<sup>11</sup>

One year later, the police stopped him for a traffic violation again. He failed the sobriety test given after he pulled his car off the road and into a parking lot. The police charged him with DUI. The State amended the charge to drunkenness. He pled guilty and the court fined him.<sup>12</sup>

A few months later, in October 2003, he spent the evening drinking with friends at a bar. After he left, he stopped to urinated. The police saw him and arrested him for public urination. He paid a \$79 fine.<sup>13</sup>

Applicant's last DUI occurred in May 2007. The police stopped him for speeding. The police officer smelled alcohol and performed a breathalyzer test. The police charged Applicant with DUI based on his blood-alcohol level of .08. Applicant pled guilty to DUI. The court sentenced him to 180 days in jail, which was suspended; fined him

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<sup>9</sup>GE 1, *supra* note 1, at 22; GE 2, *supra* note 7, at 2; Tr. 39-42.

<sup>10</sup>GE 1, *supra* note 1, at 17, 21; GE 2, *supra* note 7, at 2; Tr. 28-30, 42-43.

<sup>11</sup>GE 1, *supra* note 1, at 20; Tr. 43-45.

<sup>12</sup>Tr. 45-46.

<sup>13</sup>GE 1, *supra* note 1, at 19; Tr. 46.

\$250; directed he attend alcohol counseling, which he did; and restricted his driving privileges for one year.<sup>14</sup>

Up until May 2007, Applicant believed he had his alcohol consumption under control. When the police arrested him in May 2007, he realized that he had a problem with alcohol. He contacted a co-worker, who is a recovering alcoholic and a member of Alcoholics Anonymous (AA), on the night of his arrest and asked for help. His co-worker directed him to AA, challenged him to complete 90 AA meetings in 90 days, and recommended he enroll in an in-patient treatment program. Applicant immediately started attending AA meetings and scheduled an appointment with the Director of an in-patient program.<sup>15</sup>

Applicant met with the in-patient program director, a medical doctor, about two weeks after his arrest in May 2007, for an evaluation. The doctor diagnosed him with alcohol dependence, a diagnosis with which Applicant agrees. The doctor recommended in-patient treatment and use of Campral, a medication used to help him abstain from alcohol. The in-patient treatment program admitted Applicant immediately after his evaluation. He completed 18 three-hour sessions, which included group therapy, psycho education, family education, and random urine drug screens and breathalyzer tests. He also attended 12 step meetings while in the program. He presented in-group, a detail autobiography, which included personal information on his family dynamic, school, significant events, and other matters. He successfully completed the program. He now attends their after care program and AA up to five times a week. He continues to take Campral. Applicant considers AA a strong support system for him. If he misses a few meetings, he feels something is missing in his life. He accepts that he is an alcoholic and understands that he rationalized his past alcohol consumption to avoid admitting a problem.<sup>16</sup>

Applicant's current lady friend testified. They have been dating for the last 4 ½ years. While she observed him drinking alcohol, she did not realize that he had a serious problem because he was not blatantly drunk. He has never been physically abusive to her. She describes his relationship with his children as caring. He always tries to do the right thing. He is very diligent about managing his alcohol problem. She talks with him every day and sees him on the weekends only, because of his attendance at AA. She also stated that he goes to family counseling with his children and ex-wife to work out issues concerning visitation.<sup>17</sup>

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<sup>14</sup>GE 4 (Attachment to answers to interrogatories) at 4-5; AE A (Verification he completed state substance abuse program); Tr. 46-47.

<sup>15</sup>GE 3 (Attachment to answers to interrogatories) at 5-8, 10; Tr. 47-48.

<sup>16</sup>GE 3, *supra* note 14, at 10; GE 4, *supra* note 13, at 6; AE B (Letter, dated March 4, 2008) AE C (Copy of prescription); AE D (AA notes of Applicant) at 1-2; Tr. 48-51. At the hearing, Applicant showed me a notebook outlining all the AA meetings he has attended since last May. Tr. 22-24.

<sup>17</sup>Tr. 53-60.

In addition to his testimony about his support for Applicant's alcohol treatment, his co-worker stated that Applicant missed time from work, but he does not know if his absence was due to alcohol. Applicant's attendance has improved more recently. He never observed Applicant under the influence of alcohol at work. Applicant also came very close to meeting the 90-day challenge.<sup>18</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 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

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<sup>18</sup>Tr. 63-76.

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 J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person'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:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;)
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and,
- (f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

In a period of 13 months in the middle 1980s, the police arrested Applicant twice for DUI. For each offense, the court sentenced him to substance abuse education programs. During the 1990s, the police arrested Applicant twice for assault and battery related to a fight with his ex-wife. Starting in 2000, the police arrested and charged Applicant on five separate occasions for alcohol related incidents. Based on his numerous arrests over the last 22 years, AG ¶ 31(a) applies. None of the remaining potentially disqualifying conditions are applicable in this case.

Under AG ¶ 32, the following conditions that could mitigate the government's security concerns:

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(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.<sup>19</sup>

All but one of Applicant's criminal charges arose because of his consumption of alcohol. After his first two arrests for DUI in the middle 1980s, he did not have another alcohol related arrest for 13 years. Since 1999, the police have arrested him six times for alcohol related offenses. After his last arrest, Applicant sought alcohol treatment because he finally realized he had a problem. Since his last arrest, he has not consumed any alcohol and has actively and continuously participated in alcohol treatment programs, including in-patient treatment and AA. He continues to work regularly. AA provides a strong support to help him remain sober. The evidence of record indicates he has rehabilitated himself and is continuing to work on maintaining sobriety. As long as he remains sober, there is little likelihood of future criminal conduct. Thus, AG ¶ 32 (d) has some applies.

In 1993 and 1999, Applicant and his wife fought. He acknowledges overreacting and losing control in these situations. These two incidents related to escalating arguments with his ex-wife. He has not been involved in any incidents of physical assaults with his current lady friend, a relationship which has existed for over four years and long enough to reflect that violence is not part of the relationship. In, addition, he and his ex-wife are undergoing family counseling to learn how to communicate with each other. Thus, AG ¶32(b) has some applicability because he is no longer married and does not have a volatile relationship with his current lady friend.

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to 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."

AG ¶ 22 describes conditions that could raise a security concern and the following may be disqualifying:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or

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<sup>19</sup>The mitigating conditions in AG ¶ 32(a), (c), and (e) are not applicable in this case.

other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(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;

(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 professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

For many years, Applicant has consumed alcohol on a daily basis and in excessive quantities. His habitual alcohol consumption has resulted in eight arrests for DUI or public urination, and assault and battery. All of these incidents occurred after work hours and away from the work site. AG ¶¶ 22(a) and (c) apply. AG ¶ 22(b) does not apply, since the record does not contain any evidence of alcohol-related incidents at work.

A medical doctor diagnosed Applicant as alcohol dependent in May 2007, a diagnosis Applicant acknowledges is correct. To help the treatment of his alcohol dependence, Applicant takes Campral. AG ¶ 22(d) applies. However, AG ¶ 22 (g) does not apply as Applicant has always complied with court orders regarding alcohol education and treatment. Since he stopped consuming alcohol in May 2007, he has remained abstinent. Likewise, he has honored his decision not to use marijuana for almost six years.<sup>20</sup>

AG ¶ 23 provides conditions that could mitigate security concerns:

(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

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<sup>20</sup>The disqualifying conditions AG ¶¶ 22(e) and (f) are not raised in this case.

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.

Given it has been less than a year since Applicant stopped consuming alcohol, AG ¶ 23(a) does not apply. However, the remaining mitigating conditions must be addressed. Applicant acknowledges that he is alcohol dependent. He successfully completed an intensive in-patient treatment program in August 2007. During this program, he developed an after-care treatment plan. He follows this plan, which includes almost daily AA meetings. Through AA, he has established a support network to help him maintain sobriety. His evidence indicates his participation in AA and his witnesses confirm his determination to remain sober. Prior to May 2007, he participated in one alcohol rehabilitation program, and he attended several alcohol education programs as directed by the court. He has not relapsed since recognizing he had an alcohol problem and needed help. He continues with his medication and after-care programs. Thus, AG ¶¶ 23 (b) and (c) are applicable and AG ¶ 23(d) is partially 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 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. Applicant began drinking as a young man, at the end of high school. (See AG ¶ 2(a)(4).) As a result of his early alcohol consumption, the police stopped him twice and charged him with DUI. After these arrests, Applicant continued to drink, but more responsibly. For nearly six years, he did not consume alcohol. In 1996, he resumed drinking alcohol. Problems developed in his marriage and he managed this stress by increasing his alcohol consumption. From 1999 until May 2007, he continued to drink to excess. (See AG ¶¶ 2(a)(1), (2), (3), and (5).) Since that time, Applicant has changed his attitude and behavior in regards to his alcohol consumption. He recognized and accepted that he needed help because he could not control his alcohol use. Upon the suggestion of a trusted co-worker, he started attending AA meetings immediately after his last DUI and sought in-patient treatment. He successfully completed his in-patient treatment and continues to follow his after-care plan. He relies on AA and its well-established program to provided the support he needs to continue with sobriety. He has embraced the AA's concepts and philosophies about the detrimental effects of alcohol consumption in his life. (See AG ¶¶ 2(a)(6) and (7).) He has been very open and candid about his alcohol abuse and his treatment. There is little likelihood he can be coerced, exploited or pressured into revealing classified information based on his past alcohol consumption. His criminal conduct can be directly related to his alcohol consumption. As long as he remains sober, something he is committed to doing, there is little likelihood that his criminal conduct will reoccur. (See AG ¶ 2(a)(8).) During the 23 years he has held a security clearance, he has not compromised classified information and is not likely to do so in the future. While his length of sobriety is 10 months, this length of time is insufficient to raise security concerns because of his strong commitment to sobriety as shown by his AA attendance, which indicates his determination to remain sober. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his criminal conduct and 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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

Paragraph 2, Guideline G:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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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MARY E. HENRY  
Administrative Judge