



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 07-06408
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Franklin J. McElhaney, Union Representative

February 26, 2008

**Decision**

MALONE, Matthew E., Administrative Judge:

On January 17, 2006, Applicant submitted a Security Clearance Application (SF 86) to request a security clearance as part of her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to give Applicant a security clearance. On October 1, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)<sup>2</sup> under Guideline G (alcohol consumption).

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on November 6, 2007, and I scheduled a hearing to be held on December 13, 2007. The parties appeared as scheduled. Without objection, I admitted six exhibits offered by the government (Gx. 1 - 6). Applicant testified in her own behalf, and offered one exhibit, which was admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received the transcript (Tr.) on January 2, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's request to renew her security clearance is denied.

### **Findings of Fact**

The government alleged in SOR ¶ 1.a that Applicant consumed alcohol between 1999 and 2007, at times to excess and to the point of intoxication. In SOR ¶ 1.b, the government alleged Applicant was arrested in April 1999 and charged with driving while intoxicated, as a result of which she was fined and her driving privileges were suspended for one year. In SOR ¶ 1.c, the government alleged Applicant was arrested in March 2007 and charged with driving under the influence, for which she was sentenced to 33 days in jail (30 of which were suspended for five years), her driving privileges were restricted for one year, she was fined, and she was ordered to complete a 10-week alcohol safety awareness program (ASAP).

In response to the SOR, Applicant denied SOR ¶ 1.a, but admitted SOR ¶¶ 1.b and 1.c. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 44 years old and has worked since 2004 as a security guard for a defense contractor at a NASA facility. She attended college at a large state university from September 1981 until June 1982, and is a single mother of two, ages 12 and 20. At work, she also serves as a union shop steward at work. Applicant is generally well-regarded by her co-workers, especially for her work in support of diversity workshops and other issues of importance to her constituents. (Ax. A) Applicant carries a firearm as part of her duties. (Tr., 52)

On or about April 18, 1999, Applicant was arrested and charged with driving under the influence of alcohol. It was her birthday and she had been out celebrating. Applicant estimated she had about four glasses of wine that evening and that her blood alcohol content (BAC) was at least .10%. (Tr., 36 - 37) She was found guilty, fined, and her driving privileges were revoked for one year. (Answer; Tr, 39)

On March 2, 2007, Applicant was arrested and charged with driving under the influence of alcohol with a BAC of .21%. (Gx. 6) Applicant had been at a club on the base where she works and was driving home. She testified she had two glasses of wine and two beers over a five hour period. The BAC was based on a blood test, but the vials were not admitted at her trial because of defective chain of custody. However, based on her admissions at trial, she was convicted and sentenced to 33 days in jail. The judge suspended 30 days of her sentence. However, the suspended sentence was conditioned for five years on good behavior, completion of ASAP, payment of her fines

and costs, and that she have no further arrests for DUI, or arrests for reckless or aggressive driving, or arrests for driving while drinking. (Gx. 3; Gx. 6)

On June 15, 2007, Applicant submitted a notarized response to DOHA interrogatories about her consumption of alcohol and her alcohol-related arrests. Applicant acknowledged she consumes alcohol; that her drink of choice is wine; that she had last consumed alcohol on June 2, 2007; that she at times drinks to the point of intoxication; and that she was last intoxicated the night she was arrested for DUI in March 2007. (Gx. 2) As to her admission in response to the interrogatories that she at times drinks to the point of intoxication, Applicant insists she did not understand the question as it was drafted and did not know she could elaborate. Had she known that, she “would have filled in something totally different...” (Tr., 22 - 23, 32)

When Applicant was hired in 2004, she initially denied she had ever been in trouble. Upon being asked by the company security officer a second time, she disclosed her 1999 DUI. She was told that a single offense would probably not prevent her from getting a security clearance. (Tr., 20) Applicant further testified that she would not have gotten her second DUI in 2007 had anyone told her it would adversely impact her suitability for a security clearance. (Tr., 20 - 21)

Applicant first used alcohol in her early 20's. She primarily drinks wine, but was evasive in her testimony when asked how often she has been intoxicated, preferring to debate the definition of “intoxicated” rather than give straightforward answers to questions about how often she has been intoxicated. (Tr., 26, 33 - 35) At one point in her testimony, she stated she has only been intoxicated twice, on the dates she was arrested for DUI in 1999 and 2000. (Tr., 23) On cross-examination, she admitted she has been intoxicated more than twice. (Tr., 34 - 35) Applicant also testified she attends a weekly karaoke event at the club where she was drinking before her most recent DUI, but if she drinks she has someone else drive her home. She was leaving the same event when she was arrested in March 2007. (Tr., 31, 53 - 54)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>3</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines.<sup>4</sup> The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant.

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<sup>3</sup> Directive. 6.3.

<sup>4</sup> Commonly referred to as the “whole person” concept, these factor are:(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.

However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties at hearing require consideration of the security concerns and adjudicative factors addressed under Guideline G (alcohol consumption) at AG ¶ 21.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>7</sup>

## Analysis

### Alcohol Consumption.

Under Guideline G, "[e]xcessive 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 ¶ 21) The government alleged Applicant has consumed alcohol since 1997, at times to excess, and that her alcohol consumption has resulted in two arrests and convictions in the last 10 years for driving under the influence of alcohol. Available information is sufficient to support the SOR allegations. Applicant's testimony about her use of alcohol in support of her denial of SOR ¶ 1.a was not credible. In addition to the two arrests, she begrudgingly admitted she has been intoxicated at other times. She continues to consume alcohol, and intends to do so in the future. As to whether she has engaged in excessive use of alcohol, I conclude it is more likely than not that she has done so more often than she will admit. Despite the fact the evidence of a .21% BAC was not used to convict her of her March 2007 DUI charge, the court nonetheless had enough information to convict and was sufficiently concerned about her drinking to impose a five-year condition on the suspension of most of her 33-day jail sentence.

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

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

Based on the foregoing, the Guideline G disqualifying conditions in AG ¶¶ 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*) and 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*) must be considered. By contrast, the recency of her latest arrest, and her evasiveness about the true scope of her drinking habits preclude consideration of any of the mitigating conditions listed at AG ¶ 23.

### **Whole Person Concept.**

I have evaluated the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guideline G. I have also reviewed the record before me in the context of the whole person factors listed in ¶ AG 2(a).<sup>8</sup> Applicant is a mature adult, a single mother of two, and is well-respected at work. However, her unwillingness to be forthcoming about her use of alcohol precludes a conclusion she is rehabilitated and unlikely to engage in such conduct in the future. Of particular concern is her assertion that, after having worked in her current job as an armed security guard at a sensitive facility for nearly three years, she needed someone to explain to her the security significance of having a second alcohol-related arrest in 2007. Such a response to the government's concerns reflects an inability or unwillingness to accept responsibility for her actions. A fair and commonsense assessment<sup>9</sup> of all of the information bearing on Applicant's use of alcohol shows there are still doubts about her ability to protect the government's interests as her own. Because the protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the national interest.<sup>10</sup>

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<sup>8</sup> See footnote 4, *supra*.

<sup>9</sup> See footnote 3, *supra*.

<sup>10</sup> See footnote 7, *supra*.

## Formal Findings

Formal findings 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

## Conclusion

In light of all of the foregoing, 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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MATTHEW E. MALONE  
Administrative Judge