



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04038
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: Eric A. Eisen, Esq.

04/15/2015

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his history of problem alcohol consumption. Clearance is granted.

**Statement of the Case**

On October 6, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing 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 adjudicative guidelines (AG).

Applicant answered the SOR on October 7, 2014, admitting subparagraphs 1.a, 1.c, and 1.d, and admitting in part, and denying, in part, subparagraph 1.b. Also in his response to the SOR, Applicant requested a hearing. On January 12, 2015, the case

was assigned to me. On January 21, 2015, a notice of hearing was issued scheduling the case for February 13, 2015. At the hearing, I received four Government exhibits marked as Government Exhibit (GE) 1 through 4, in addition to one Applicant exhibit marked as Applicant's Exhibits (AE A). I received the transcript (Tr.) on February 20, 2015.

### **Findings of Fact**

Applicant is a 43-year-old married man. He graduated from high school in 1989 and entered the U.S. Air Force shortly thereafter. After basic training, he completed the Airman Leadership School and was the class valedictorian. (Tr. 15) Applicant was honorably discharged in 1998. (Tr. 17)

Since 1998, Applicant has worked in the electronics and avionics fields. (Tr. 18; GE 1 at 13-17) In 2001, he joined the Air National Guard (the Guard). Over the years, he has served in multiple overseas deployments, including in Iraq and Afghanistan. (Tr. 19-26) Applicant retired honorably from the Guard in 2013. (Tr. 44)

Applicant is highly respected by supervisors and coworkers in both his civilian and military careers. His current program manager characterizes him as a superb employee who often sacrifices comfort for mission. (AE A at 2) According to a previous supervisor, he is a responsible individual with a great work ethic. (AE A at 6) According to a manager of a project that Applicant supports, his "work product is at the top of the pyramid" of the technical service engineers who support the project. (AE A at 7) Also, Applicant is an extremely team-oriented individual who once took an overseas double rotation over the Christmas holidays so that his fellow coworkers could spend the holidays at home. (AE A at 7) According to his former Guard supervisor, Applicant's work "was always highly professional and of excellent quality." (AE A at 1)

In November 2003, Applicant failed a field sobriety test after being stopped by the police. Subsequently, he was arrested and charged with operating a motor vehicle under the influence of alcohol (DUI). (Tr. 21) The police officer did not administer a breathalyzer test until she took Applicant to the police station. There, Applicant's blood alcohol content measured below the legal DUI threshold. Consequently, the court reduced the charge to public intoxication, a misdemeanor. (Tr. 21) Ultimately, Applicant was awarded non-judicial punishment of a reduction in rank.

In August 2006, Applicant was arrested and charged with DUI after failing a breathalyzer at a roadside checkpoint. (Tr. 23) His blood/alcohol content was .086. (Tr. 23) The following month, he was convicted. The court suspended his driver's license for 45 days, fined him, and ordered him to attend alcohol abuse counseling. Applicant attended the counseling, as ordered. The sessions were two nights per week for one hour each night, over an approximately eight-week period. (GE 1 at 34) Applicant "got nothing out of [the] counseling" because it focused primarily on hard drug abuse. (Tr. 24)

One evening in August 2012, Applicant drank five to six beers over the course of five hours while out with friends. (Tr. 26) Later, while riding home on his motorcycle in the far right lane of an expressway, a car cut across three lanes to exit a ramp in front of him. Enraged, Applicant exited the expressway at the same ramp, accelerated around the car and cut in front of it. Unable to stop, the driver of the car hit Applicant's motorcycle from behind, throwing Applicant from the motorcycle. The automobile driver then left the scene without stopping. Bystanders called the police. Applicant was taken to the emergency room, administered a blood alcohol test, arrested, and charged with DUI. (Tr. 28-30) In December 2012, Applicant was found guilty. His driver's license was suspended for 60 days and he was fined \$818. (GE 4 at 1) Also, the court ordered Applicant to attend alcohol abuse counseling. (GE 4 at 2)

Applicant attended the alcohol abuse counseling, as ordered. It lasted four to five weekends and consisted of two sessions each weekend, lasting eight to nine hours per session. (Tr. 37) Applicant considered it very productive. He learned that alcohol affects one's motor function, reaction time, and decision-making ability regardless of whether one can subjectively feel its effects. (Tr. 31) Applicant was never diagnosed as either alcohol abusive or alcohol dependent. (Tr. 40)

Applicant reduced his alcohol consumption after the 2012 arrest. He no longer drinks at bars, and he does not plan on ever drinking and driving again. (Tr. 36-37) Although he did not express an intention to quit drinking entirely, he has not had an alcoholic beverage in three months. (Tr. 34)

Applicant's former Guard supervisor, a mental health counselor in his civilian capacity, frequently travelled with Applicant on temporary duty assignments over the course of seven years. During off-duty hours they would occasionally go out to dinner and bars. His former Guard supervisor never saw him consume more than two alcoholic beverages and never observed him intoxicated. (AE A)

Applicant's former Guard supervisor also has a personal relationship with Applicant, having lived with him for six months while in the process of relocating. During this time, he never observed Applicant having a drink when he came home from work. Although they sometimes went out to dinner and consumed drinks, his former Guard supervisor never observed him drink more than two drinks per sitting and never observed him intoxicated.

### **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(a), 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.”

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 to obtain a security clearance.

## **Analysis**

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

Under this guideline, “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 ¶ 21). Applicant’s history of alcohol-related criminal offenses triggers the application of AG ¶¶ 22(a), “alcohol-related incidents away from work, such as driving under the influence . . .,” 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.”

The following mitigating conditions under AG ¶ 23(a) 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); 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 . . . abstinence in accordance with treatment recommendations, such as participation in meetings of AA 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 arrest occurred approximately two and a half years ago. After that arrest and subsequent conviction, he received approximately 80 hours of counseling over a four to five week period. After the arrest, he reduced his

alcohol consumption, and he currently has not consumed an alcohol beverage in three months.

These facts, together with Applicant's outstanding character references, particularly the reference from his former Guard supervisor concerning his drinking habits, lead me to conclude that all of the above-reference mitigating conditions apply.

### **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) 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.

Applicant's alcohol-related offenses constitute serious misconduct. Because Applicant was 30 when the first arrest occurred, age and immaturity are not mitigating factors. However, Applicant's modification of his drinking habits after attending counseling, the length of time that has elapsed since the last offense, and his outstanding character references compel me to conclude that he has mitigated the security concern.

### **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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge