



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01069
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

04/05/2016

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, alcohol consumption. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On September 5, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006.

On September 30, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 15, 2016. The Department of Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 9, 2016. I convened the hearing as scheduled on March 4, 2016.

The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through H, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 14, 2016.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 48 years old. He earned a bachelor's degree in 1991 and a master's degree in 1997. He has been married four times. He most recently married in 2013. He has two children, ages seven and four, from his third marriage. He was on active duty in the military for approximately eleven years and then served in the reserves. He retired from the military in 2009 in the paygrade O-4. In addition to civilian employment in the United States, Applicant has worked at various jobs overseas for several years. He has also experienced periods of unemployment. He has worked with his present employer, a federal contractor, for about 14 months.<sup>1</sup>

Applicant has a history of consuming alcohol, at times to excess and to the point of intoxication, from 1991 until at least 2013. He admitted that he continued to consume alcohol until at least February 2015. Applicant admitted that two of his marriages ended because of his alcohol issues.<sup>2</sup>

Applicant was arrested in February 1991 and charged with driving under the influence (DUI) of alcohol. He was convicted of the offense in May 1991.

In 1999, Applicant went through intensive alcohol outpatient treatment from May through July. He testified that after this treatment he immediately resumed drinking alcohol. Between September and October 2001 he went through another treatment program and was diagnosed as alcohol dependent. He believed the diagnosis was from a social worker. He relapsed about six months after this treatment.<sup>3</sup>

In about October 2006, Applicant left employment with a state agency under unfavorable conditions due, in part, to his alcohol issues. He again participated in alcohol treatment from October 2006 to November 2006. He relapsed and began consuming alcohol. He believed he was sober about a year before the relapse.<sup>4</sup>

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<sup>1</sup> Tr. 19-30.

<sup>2</sup> Tr. 32, 53-54.

<sup>3</sup> Tr. 54-56.

<sup>4</sup> Tr. 49-50, 57-58.

In June 2012, Applicant was arrested and charged with third degree assault and DUI. In April 2013, he received a deferred prosecution on the assault charge and was placed on probation. The DUI charge was dismissed due to lack of evidence. Applicant's probation was terminated early and the assault charge was dismissed in August 2013.<sup>5</sup>

In September 2013, Applicant left his employment under unfavorable circumstances, due, in part, to issues related to his alcohol abuse. Applicant voluntarily sought inpatient alcohol treatment between October and November 2013. He was diagnosed with alcohol dependence. He relapsed a week after he left treatment and resumed inpatient treatment from December 21, 2013, to January 3, 2014. This is the last treatment program in which he participated. Upon completion of the program, he was advised to attend Alcoholics Anonymous (AA), but he did not.<sup>6</sup>

Applicant admitted that he worked in a foreign country from October 2014 until February 2015 and left the job due to alcohol issues and attendance problems. He subsequently started a new job overseas and began reading the Bible and getting sober. He attends church weekly. He indicated he attempts to attend weekly prayer meetings, but is usually too tired to go. There are AA meetings available in his area, but he does not attend. He surrounds himself with supportive people.<sup>7</sup>

Applicant testified that he made changes in his life a year ago. He noted specific factors that demonstrate that he has changed. First, he still has a job, which if he was still drinking he would not have. Second, he is alive, and he is not sure he would be alive if he were still drinking. Third, he has moved to a different country where alcohol is not as prevalent. He will remain there until he is strong enough to maintain his sobriety. Fourth, he is married, and he would not be if he continued to abuse alcohol. Applicant studies the Bible and reads devotionals to help him maintain his sobriety. He believes his past alcohol rehabilitation failures were because he was focused on the wrong thing, such as the psychological reasons for his drinking. Now that he is focused on God he believes he has changed and can abstain.<sup>8</sup>

Applicant testified that there were periods of time where he could abstain from alcohol consumption for six to twelve months, but then would start drinking again. He experienced some blackouts, but not many. Each time he completed a treatment program he was told to abstain from consuming alcohol. Applicant admitted he is an alcoholic. He stated that he is living overseas so that "when I come back to a real world situation I am able to maintain" sobriety.<sup>9</sup> When asked if his wife consumes alcohol, he

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<sup>5</sup> Tr. 43, 50-52, 59-60.

<sup>6</sup> Tr. 41-46, 61.

<sup>7</sup> Tr. 32-34, 46-48, 64-66.

<sup>8</sup> Tr. 37-38, 48-49.

<sup>9</sup> Tr. 63.

indicated she will occasionally have some for a special occasion, but is respectful of his condition. She does not reside with him overseas. He stated she can drink in front of him and it does not bother him.<sup>10</sup>

Applicant stated that he intentionally lives in a foreign country where alcohol is not as freely available to help him maintain his sobriety. He has had job offers in other foreign countries where alcohol is more available, but intentionally chose a country that has more restrictions on alcohol. He lives where alcohol is not in front of him everywhere he goes.<sup>11</sup>

Applicant provided documents showing his military and government service awards, civilian evaluations, and a superior honor award.<sup>12</sup> In addition, he provided character letters that describe him as a person of good moral character, who is dedicated and a person of integrity. He is a person with exemplary characteristics and professional skills who loves his country. His wife provided a letter. She noted that Applicant has been through alcohol rehabilitation and had relapses, but quickly gets back on track. He has recently changed his focus and is rededicated to his faith. This spiritual connection has fostered a positive change in him beyond sobriety.<sup>13</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 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, these guidelines are applied 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

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<sup>10</sup> Tr. 32-34, 53, 59, 63.

<sup>11</sup> Tr. 32-34, 46-47, 64-67.

<sup>12</sup> AE A, B, C, and D.

<sup>13</sup> Tr. 38-41; AE E, F, F, G and H.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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 G, Alcohol Consumption**

AG ¶ 21 expresses the security concern for 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.

I have considered the following disqualifying condition for alcohol consumption under 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.

(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 was diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) or alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant had numerous alcohol-related incidents, including arrests for DUI and assault, from 1991 through 2012. He left jobs, due in part, to alcohol abuse. He participated in both inpatient and outpatient alcohol treatment programs at least four times and repeatedly relapsed. During some of the treatments he was diagnosed with alcohol dependence. Although the evidence is not specific as to the qualifications of the persons making the diagnosis, they were made at medical and alcohol treatment facilities. I find the above six disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns. The following mitigating conditions under AG ¶ 23 are potentially applicable:

(a) So much time has passed, or the behavior is 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 has a long history of alcohol abuse and dependency. He has repeatedly relapsed after both inpatient and outpatient treatment. His testimony is that he has not consumed alcohol since February 2015. He acknowledged he is an alcoholic. He stated that he has maintained sobriety for periods, but each time he eventually relapsed. He does not follow a structured program, but chooses to devote himself to focusing on his spiritual commitment to remain sober by reading the Bible. He has attended a weekly prayer group, but admitted he often misses it because he is too tired. He intentionally lives in a country that restricts alcohol, so he will not be tempted to consume it. Those more recent efforts demonstrate positive actions to address his alcoholic behaviors. However, given Applicant's long history of alcohol abuse and repeated treatment failure, insufficient time has passed to conclude his alcohol abuse will not recur. I find AG ¶¶ 23(a) and 23(b) do not apply. Applicant is not participating in a current treatment program. AG ¶ 23(c) does not apply. Applicant did not provide evidence that he is in an aftercare program. He provided evidence that he has had a successful military and civilian employment and awards he has received. However, there is no evidence of a favorable prognosis by a qualified medical professional or licensed clinical social worker. AG ¶ 23(d) does not 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 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 Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 48-year-old educated man. He has a long history of alcohol abuse and has been diagnosed with alcohol dependence. He has had periods of sobriety, but has been unable to maintain them even after completion of extensive inpatient and outpatient treatment. He does not participate in any form of ongoing treatment to assist him in maintaining sobriety, but rather chooses to live overseas in a country that restricts the availability of alcohol. He is now focused on maintaining his sobriety through his spiritual commitment to God. His actions are commendable, but his past cannot be ignored. Without a proven long-term period of sobriety, I am unable to conclude that Applicant's alcohol issue is not a security concern. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline G, 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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge