



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 15-07790  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: Eric A. Eisen, Esq.

02/27/2017

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns about his past misconduct, which was inextricably linked to his excessive alcohol use and a succession of bad relationships. He stopped drinking alcohol nearly four years ago, ended the unhealthy relationships, and has matured greatly over the past few years. He demonstrated that he can be trusted to conduct himself in the manner expected of all clearance holders. Clearance is granted.

**Statement of the Case**

On April 20, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the (excessive) alcohol consumption and personal conduct guidelines.<sup>1</sup> Applicant timely answered the SOR and requested a hearing to establish his eligibility for a security clearance.

<sup>1</sup> This action was taken under Executive Order (E.O.) 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.

On September 27, 2016, a date mutually agreed to by the parties, a hearing was held.<sup>2</sup> Applicant testified at the hearing and the exhibits offered by the parties were admitted into the record without objection (Government Exhibits 1 – 10; Applicant's Exhibits A – D). The transcript of the hearing (Tr.) was received on October 5, 2016.

On January 27, 2017, after reviewing the transcript and the record evidence, I advised the parties that the matter appeared appropriate for summary disposition in Applicant's favor. In reaching this conclusion, I took particular note and considered Department Counsel's closing argument, where he stated:

Sir, as usual, in these cases, we get a lot more information than appears in the written record. Then the Applicant sits up there and testifies fully and, it appears to me, forthrightly. At this point, Your Honor, I'm going to leave this in your sound discretion. (Tr. 45)

Notwithstanding the Government's stated position at hearing, Department Counsel objected to a summary disposition and, instead, requested a full decision.<sup>3</sup>

### **Findings of Fact**

Applicant is in his early thirties. His parents divorced when he was young. Because his father was not a consistent presence in his life after the divorce, Applicant helped his mother raise his sister who was just a newborn when the divorce occurred.

During his senior year of high school, Applicant went to beach party in Panama Beach, Florida, for spring break. He consumed too much alcohol at the beach party and got behind the wheel of his car. He was arrested, charged, and convicted of driving under the influence (DUI).

After graduating from high school in 2005, Applicant enlisted in the U.S. military. He served continuously in the military until 2013, when he voluntarily separated from active duty and received an honorable discharge. He held a security clearance while in the military. He is an aircraft mechanic and has been with his current employer, his clearance sponsor, since 2013. He submitted a security clearance application in connection with a periodic reinvestigation of his background in 2015.

Applicant is a single parent raising two young boys from his first marriage. His first wife left the marriage in 2010, when his youngest child was less than a year old. His former wife was addicted to drugs and was unwilling to obtain help. While Applicant was still in the military, his former wife, in a drunken, drug-induced stupor, called the police and falsely accused him of an act of domestic violence. This occurred in about 2008. Applicant voluntarily received therapy through the military to assuage any concerns

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<sup>2</sup> Prehearing correspondence, the notice of hearing, and the case management order are attached to the record as Appellate Exhibits (App. Exh.) I – III, respectively.

<sup>3</sup> App. Exh. IV.

raised by his wife's false accusations. The charge from this purported incident was later dismissed. Applicant divorced his first wife in 2012, and she later passed away from a drug overdose.<sup>4</sup>

Between the time Applicant separated from his wife in 2010 and the final decree of divorce in 2012, he was involved in two incidents leading to criminal charges. One night in February 2011, after getting a babysitter for his boys, he went out with friends. He drank too much alcohol, decided to drive home, and crashed into some mailboxes. He was arrested for DUI and destruction of property. Days later, he went to the home of each of the homeowners and apologized in person. He either reimbursed the homeowners for the cost of replacement or helped them repair the damage. He also obtained alcohol counseling before his court date. He pled guilty to the DUI charge.

Two months later, in April 2011, shortly before picking up his children from daycare, Applicant was hurriedly shopping at the base exchange (BX). He mistakenly forgot to pay for some fishing lures he had picked up. As he was exiting the BX, a security guard stopped him. He tried to explain that he simply had forgotten the lures when he went paid for the rest of his purchases. He offered to pay for the lures, which cost less than \$10, but was charged with shoplifting. The charge was later dismissed. Applicant denies deliberately or intentionally shoplifting the fishing lures.<sup>5</sup>

Shortly after divorcing his first wife in 2012, Applicant married his second wife. Applicant and his second wife dated for a short while before getting married. She is younger than he and from South America. The marriage was short lived. She was physically and mentally abusive to Applicant and his children. In March 2013, she filed a false claim of domestic abuse. Applicant was acquitted of the charge, and filed for an order of protection. After hearing evidence, a family court judge granted Applicant's request for a protective order.

Applicant's second wife subsequently fled the country. He filed for divorce. A hearing on the matter has been repeatedly delayed because Applicant has been unable to personally serve his estranged wife with the divorce paperwork. He is using alternate, authorized means to notify her of the divorce action and, once the requisite time has passed, he does not anticipate any other issues in receiving a final judgment of divorce.

Applicant found himself in disarray after separating from his second wife and dealing with her false accusations of abuse. For his children's 2013 summer break, he decided to visit his father who he had not seen in some time. He dropped off his children with his mother and then traveled alone to visit his father. Applicant's father had remarried after divorcing his mother and had his own young family. Following a tense conversation with his father, Applicant consumed too much alcohol, drove his car, and was arrested for DUI. He immediately contacted his facility security officer (FSO) and

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<sup>4</sup> Tr. 13-18, 32-35, 42-43; Exhibits 1, 3, 8, 9.

<sup>5</sup> Tr. 18-22, 35-37, 40-41; Exhibits 6, 7.

alerted the FSO to the arrest. He was subsequently convicted of DUI, and served a few days in jail. He has not seen his father since the June 2013 DUI arrest.<sup>6</sup>

Applicant was required to attend alcohol awareness classes as a part of the court sentence. His probation officer recommended that he also go to alcoholics anonymous (AA). He successfully completed all requirements of the court sentence. He also voluntarily attended AA. He testified that the AA meetings had a significant impact, because he saw how other AA participants lost their family because of their alcohol use. He realized "I can't be like that," and has not consumed alcohol since the 2013 DUI arrest.<sup>7</sup> He testified as follows regarding his decision to stop drinking:

Department Counsel: How did you come to the decision to stop drinking altogether?

Applicant: Just having to deal with issues like that, going to jail and the effects it has on my family and friends and my children, mainly. They shouldn't have to have a father that isn't around. What if something bad happens and I kill myself or someone? . . . going to jail for hitting someone. That just scared me to have my children have to experience that with their mother already not being around as it is. I think it was time for me to grow up.<sup>8</sup>

Applicant spends his free time with his children, including coaching their sports teams and taking them to amusement parks. He is closely involved with their extracurricular activities. Since separating from his second wife, Applicant has taken up fishing and outdoor dirt biking as way to help cope with everyday stress and pressures. He owns his home and is actively involved in the community. He has made a number of friends through the extracurricular activities with his children. A number of social and professional acquaintances submitted letters corroborating Applicant's sobriety over the last three-plus years. They also provided favorable information regarding Applicant's character. Applicant recognizes the poor personal decisions he has made in the past. Going forward, he is committed to managing his personal affairs in a responsible manner and maintaining his sobriety.<sup>9</sup>

## Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

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<sup>6</sup> Tr. 22-26, 43-44; Exhibits 5; Exhibit A.

<sup>7</sup> Tr. 38.

<sup>8</sup> Tr. 18-22, 35-37, 40-41.

<sup>9</sup> Tr. 26-27, 39-40; Exhibits B – D.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an 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.

## **Analysis**

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

The SOR alleges Applicant's history of excessive alcohol consumption, which led to DUI convictions in 2004, 2011, and 2013. The security concern regarding an applicant with such a troubled history with alcohol is set forth at 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 evidence adduced at hearing requires consideration of the following disqualifying and mitigating conditions:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 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;

AG ¶ 23(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;

AG ¶ 23(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

AG ¶ 23(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 [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 last alcohol-related incident was nearly four years ago. He credibly testified that he stopped drinking alcohol after the 2013 DUI and supplied corroborating documentation of his sobriety. Additionally, other than the 2004 DUI when he was in high school, Applicant's alcohol-related issues have been closely tied to his troubled marriages. He used alcohol as a means to temporarily escape from or handle the pressures in these toxic relationships. He has now moved on from these turbulent relationships. He supplied evidence to corroborate key portions of his testimony, including the positive lifestyle changes he has made over the past several years. He is now focused on raising and caring for his young boys. He is actively involved in their many extracurricular activities. He now handles everyday pressure in a positive manner, including spending time fishing to help manage the stressors that come with being a single parent. After a complete and thorough review of the record evidence, I find that AG ¶¶ 23(a), 23(b), and 23(d) apply, in whole or in part, and together with the favorable whole-person factors present in this case mitigate the security concerns raised by Applicant's past alcohol abuse.

## Guideline E, Personal Conduct

The SOR alleges under Guideline E the false reports of domestic abuse involving his former spouses. It also alleges the property destruction that Applicant caused in 2011 when he drove his car drunk and the 2011 shoplifting charge. The personal conduct security concern is explained at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

These allegations require consideration of several personal conduct disqualifying conditions, the most pertinent of which is AG ¶ 16(c):

[C]redible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The number of allegations under Guideline E, as well as the DUIs, raise serious questions about Applicant's judgment and his ability to comply with rules and regulations. As Department Counsel pointed out, the naked record alone does not provide a full, complete, and accurate picture of Applicant's security worthiness. Instead, at hearing, Applicant fully addressed the concerns raised by these allegations through his "forthright" testimony and by providing substantial documentation to corroborate key portions of his testimony. Of note, Applicant established that three of the four Guideline E allegations were unsupported by the evidence, i.e., the 2008 and 2013 domestic abuse allegations and the 2011 shoplifting charge.

As for the 2011 property damage that Applicant caused while driving under the influence, he took immediate and voluntary remedial action to address the damage. His reaction to this incident speaks volumes as to his judgment and sense of personal responsibility. Moreover, this incident, as well as the rest of his past issues, were connected to his former bad relationships that clearly exacerbated an underlying alcohol problem. He has now addressed those past issues.<sup>10</sup>

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<sup>10</sup> In many respects this case is similar to ISCR Case No. 11-12202 (App. Bd. June 23, 2014), where the judge's favorable decision was affirmed because applicant's past misconduct was related to other issues that exacerbated underlying alcohol problems, the passage of time without recurrence of issues, and clear indications of reform and rehabilitation.

Moreover, Applicant did not attempt to hide the potentially derogatory information. Instead, following the 2011 DUI, he immediately informed his FSO. He then disclosed this information and other pertinent background information on his clearance application and discussed them fully with a background investigator. He provided documentary evidence to support his testimony, including establishing his innocence to some of the SOR allegations and to demonstrate he has reformed his past behavior.<sup>11</sup>

Accordingly, I find that the following personal conduct mitigating conditions apply, in whole or in part, and together with the favorable whole-person factors present in this case mitigate the Guideline E security concern.

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

### **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 (Alcohol Consumption): Subparagraphs 1.a – 1.d:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E (Personal Conduct): Subparagraphs 2.a – 2.d:	FOR APPLICANT For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>11</sup> *Contrast with*, ISCR Case No. 12-04813 (App. Bd. July 31, 2015) (judge erred in relying on uncorroborated claims of reform and rehabilitation in finding that applicant had mitigated history of felony-level criminal conduct and failed to consider applicant's failure to report adverse information as required).