



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



In the matter of: )  
)  
) ISCR Case No. 17-02962  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*  
12/27/2018

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline G (alcohol consumption). Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 21, 2016. On September 13, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR on October 5, 2017, admitting the allegations in SOR ¶¶ 1.a through 1.c. He also requested a hearing before an administrative judge. The case was assigned to me on October 16, 2018. On November 20, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 5, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. At the hearing, Applicant testified on his own behalf and provided four character reference letters that were marked as Appellant's Exhibits (AE) A - D. DOHA received the transcript (Tr.) on December 14, 2018.

### **Findings of Fact<sup>1</sup>**

Applicant is 39 years old. He graduated from high school in 2003 and he completed some college. He enlisted in the Air National Guard (ANG) in 2003 and served honorably for 13½ years until late 2016. Applicant was married in February 2018 and he reports no children. (Tr. 40-46) He deployed three times overseas Qatar (2005), Kyrgyzstan (2009), and Qatar again (2011). (Tr. 42) He attained the rank of staff sergeant (E-5) and served as a warehouse supervisor and logistician. Applicant earned numerous military awards including two Air Force Achievement Medals. (Tr. 44) In February 2018, he moved with his wife from state A to state B for a pending job offer with a federal contractor in state B, which is why he needs a security clearance. (Tr. 24, 56)

On November 21, 2016, Applicant signed a Security Clearance Application (SCA),<sup>2</sup> and in section 22 (Police Record) he disclosed an arrest for driving under the influence (DUI) of alcohol in state A in July 2009. In his Answer to the SOR ¶ 1.a, Applicant stated that he was drinking to celebrate a friend's birthday, after a military trip. Applicant made a mistake in driving his friend to various bars while consuming alcohol. Applicant drove into a DUI checkpoint one mile from his home, where he was arrested and charged with DUI, first offense. He obtained an attorney and pled guilty to a reduced charge of reckless driving. Nonetheless, he was required to have an interlock device installed on his vehicle for nine months, to insure no recurrences.

Applicant disclosed his arrest for DUI, second offense, in September 2010, as alleged in SOR ¶ 1.b. He was out partying with friends in a bar, but he had pre-established his girlfriend as his designated driver for that evening. (Tr. 49-50) However, after several rounds of drinks, Applicant noticed that she was also drinking and unable to drive them all home in her van. Applicant ingested several beers and shots of whiskey. (Answer) They tried to call a taxi cab, but it was 4 a.m. After trying unsuccessfully for several hours, Applicant decided he could drive his girlfriend's van (sans interlock device) himself. (Tr. 50) He was stopped and arrested for DUI. He pled guilty to DUI, first offense, since the earlier charge was reduced to reckless driving. (Tr. 50) He disclosed that he was ordered to seek alcohol counseling, which he completed, and pay court costs and a fine.

Applicant's third alcohol-related incident occurred in October 2015 when he was arrested and charged with DUI and driving on a revoked license. The latter charge was

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's November 21, 2016 Security Clearance Application (SCA) (GE 1) and his summary of clearance interview by a background investigator. (GE 4).

<sup>2</sup> GE 1.

dismissed as a mistake since Applicant's license had merely expired. (Answer) Applicant had recently lost his best friend to addiction and he was grieving. He went to a local bar within two miles of his home to watch football and play in a fantasy football league. (Tr. 51) He was there for seven hours and ingested five beers and two shots of whiskey. He had eaten lunch, and an appetizer later. When he left, he was pulled over by a police cruiser while turning into his housing development. Applicant testified that he respectfully declined the field sobriety test because he had recently had knee surgery. (Tr. 77) This was immediately reported to Applicant's chain of command at the ANG, and he was forced to resign his full-time position while being discharged after 13 ½ years of service with a general under honorable conditions discharge. Applicant was in the process of having a home built with his fiancée' (now wife) and he did not have the funds available to vigorously contest the DUI charge.

Although he was adamant that he was not intoxicated in the October 2015 incident, Applicant pled guilty to DUI. Applicant was sentenced to five days in jail. He also paid court costs and fines, was ordered to install an interlock device until 2019, and attend a state A DUI safety and treatment program. He started the education component of that program in January 2016 and completed six weeks of three-hour lectures. Then, he completed six weeks of the intervention portion, completing the entire program in June 2016. He was diagnosed as alcohol use disorder (AUD) moderate during his treatment. (records attached to Answer) Applicant also voluntarily attended Alcoholic's Anonymous (AA) meetings, and he intends to continue to attend AA meetings in his newly adopted home state. (Tr. 58)

Applicant testified credibly that he had his last drink in November 2016 and he is a changed man since getting married and moving. (Tr. 82) He is no longer exposed to a culture of profligate alcohol consumption. It broke his heart to get discharged and lose his chosen career. (Tr. 85) He is coaching baseball and football and hopes to start a family soon in his recently purchased home in state B. He self-reported all of his offenses, and he has cooperated fully in the background investigation. Applicant provided four favorable character reference letters, which all attest to his integrity, work ethic, and trustworthiness. (AE A-D) He fully disclosed his offenses to his new federal contractor employer. (Tr. 85)

### **Policies**

DOD took action in this case under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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 national security eligibility will be resolved in favor of the 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, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

The security concern for alcohol consumption is set out in 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 guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.

Applicant had three alcohol-related incidents in a six-year period from 2009 – 2015. In 2015, he was diagnosed with alcohol use disorder (AUD), moderate, based on his voluntary disclosures. He complied with all recommendations for treatment. AG ¶¶ 22(a) and (d) are applicable.

AG ¶ 23 provides conditions that could mitigate security concerns. The following 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 judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant's last alcohol-related arrest was in October 2015. He had recently lost his best friend and was grieving. He has been sober for more than two years. Although he was diagnosed with AUD, moderate, during his treatment program, he has complied with all treatment recommendations and continues to attend AA meetings. He has completed all recommended lifestyle adjustments. He recently married and moved to state B where he purchased a new home. He is committed to his new wife and job and leads a life of abstinence. An inference can be drawn that Applicant has confronted his proclivity for alcohol, and he is appropriately coping with his diagnosed disorder. He has met his burden in establishing that his excessive drinking occurred under unusual circumstances, and that it is unlikely to recur. It does not cast doubt on his trustworthiness, reliability, or judgement. The above-mentioned mitigating conditions apply with respect to SOR ¶¶ 1.a - 1.c.

### **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(d):

- (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(d) were addressed under those guidelines. Notably, Applicant served in the Air National Guard for 13 1/2 years. He paid a high price for his mistakes in losing his chosen career. He has completed counseling and all other requirements. He purchased a new home in a different state and recently married. He has matured and is committed to his sober lifestyle. Most importantly, Applicant resolved the specific violations alleged in the SOR and he no longer consumes alcohol.

## **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.c:                      For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Robert J. Kilmartin  
Administrative Judge