

August 30, 2007

ISCR Case No. 06-20413

DECISION OF ADMINISTRATIVE JUDGE  
JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

David E. Price, Esq.

**SYNOPSIS**

Applicant is 37 years old and works as a network engineer for a defense contractor. Between 1990 and 2003, Applicant was involved in six different incidents related to alcohol abuse, which included several instances of being charged and in a couple of instances of being convicted of driving while intoxicated. In October 2003, he was involved in a serious car accident, because of his abuse of alcohol. Since 2005, he occasionally has a glass of wine. He no longer drinks and drives. He did not deliberately omit material facts in his security clearance application. Applicant has mitigated the alcohol consumption and personal conduct security concerns. Clearance is granted.

**STATEMENT OF THE CASE**

On August 17, 2005, Applicant executed an Electronic Questionnaire for Investigation Processing (e-QIP).<sup>1</sup> On December 8, 2006, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance, and issued a Statement of Reasons (SOR)<sup>2</sup> detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

In an undated Answer, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to another Administrative Judge on January 26, 2007. A Notice of Hearing was issued on February 8, 2007, scheduling the hearing for February 27, 2007. Applicant's attorney moved for a continuance of the hearing to a date to be determined later. The motion was not objected to, by the Government and it was granted. On April 10, 2007, a Notice of Hearing was issued, scheduling the hearing for May 2, 2007. Due to workload constraints, the case was assigned to me on April 30, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted 3

exhibits (Exs. 1-3) and Applicant submitted 12 exhibits (Exs. A-L), all of which were admitted into the record without objection. The record was left open until May 21, 2007, to give Applicant time to submit additional documents. By memorandum dated May 9, 2007, the Government forwarded two additional documents submitted by Applicant, without objection. These documents were identified as Exs. M and N and admitted. The transcript (Tr.) was received on May 18, 2007.

### **FINDINGS OF FACT**

Applicant admitted the factual allegations under subparagraphs 1 .b through 1 .f and 2.a. Those admissions are incorporated herein as findings of fact. He denied the allegations in subparagraphs 1.a.and 2.b. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 37 years old and works as a network engineer for a defense contractor since 2005. In 1993, he received a bachelor of science degree in electrical engineering. He has never been married.

In the summer or fall of 2003, Applicant completed a security clearance application. In January and February 2004, he was interviewed by an agent of the Defense Security Service regarding his SF 86. In approximately May or June 2005, Applicant was granted a secret level clearance. A couple of months after that, he submitted a new SF 86 for a top secret clearance.

Applicant denies the allegation that he consumed alcohol, sometimes to the point of intoxication, from at least September 2000 to present. He stated that he did not drink any alcohol from October 12, 2003 to February 20, 2005. He indicated "I had a near death accident on Oct. 11, 2003 that I barely survived that changed my perspective on alcohol and my life."

Applicant was arrested on April 8, 1990, and charged with driving under the influence (DUI). He was found guilty and forfeited a bond of \$287. His driver's license was suspended.

On December 3, 1994, Applicant was arrested and charged with driving while intoxicated (DWI) and resisting a police officer. He was found guilty-of DWI. He was sentenced to two years probation, required to attend an alcohol education program, and his driver's license was suspended.

On March 10, 1995, Applicant was charged with reckless driving to endanger. This charge was dismissed.

On September 1, 1995, Applicant was arrested and charged with DWI and reckless driving. On April 3, 1996, he would found not guilty.

On November 14, 1995, he was found guilty of DWI. He was sentenced to two years

probation, required to attend an alcohol education program, and his driver's license was suspended. He complied with the court's order.

On November 10, 2000, Applicant was arrested and charged with five counts related to alcohol consumption while driving, including attempting to elude police, DUI, speeding, failure to maintain lane, and reckless driving. He was found guilty of reckless driving, fined \$1,200, ordered to complete a defensive driving course, perform 40 hours of community service, and serve 12 months probation. He complied with the court's order.

On October 11, 2003, Applicant was arrested and charged with DUI. On November 20, 2003, he was found not guilty. Applicant was in a car accident. He remembers driving his car toward the front gate of his house before the car accident occurred. After the accident, due to brain swelling, he could not remember six weeks of his life prior to the accident. "This accident changed [Applicant's] perspective on alcohol and [his] life."

In response to question 23 on his E-QIP, (Your Police Record - For this item, report information regardless of whether the record in your case has been `sealed' or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 US. C. 844 or 18 US. C. 3607. "d. Have you ever been charged with or convicted to any offense(s) related to alcohol or drugs?"). Applicant responded "yes" and listed offenses in 2000 and 2003. He failed to disclose that he was charged with other alcohol-related offenses in 1990, 1994, and 1995. Applicant admits omitting the alcohol-related offenses that occurred in the 1990s.

He stated "I had no intention to deceive anyone." In completing the e-QUIP, he believed that any incident that was more than 10 years old did not have to be reported. A witness corroborated Applicant's testimony and indicated that for many applicants confusion exists when completing a lot of the forms.'

At the hearing, two witnesses testified regarding Applicant's character. The first witness spent 20 consecutive years in the Navy, and retired in 2003 and returned to work as a civilian. His last 16 years were in the intelligence industry. He has held a top secret clearance for the last 23 years. Applicant is his supervisor and they have worked together for the last two years and see each other on a daily basis. They have also interacted socially. This witness read the SOR and the allegations pertaining to Applicant's alcohol abuse. At work, this witness has never questioned Applicant's professionalism, integrity, and reliability. He has not seen Applicant lack attention to detail or make mistakes because he was not paying attention to what was going on around him. He endorses Applicant's application for a security clearance.

The other witness has had a personal relationship with Applicant, having met him in November 2006. She works at a high school and is also a parent educator with special education children. She has an 8-year-old son and her father was an alcoholic. She was aware of the allegations in the SOR. Applicant occasionally visits the witness and her son for dinner and has interacted at other social gatherings with them both. In the last six

months, she has seen him consume two glasses of wine. He has talked about his prior alcohol abuse. She does not believe he has a drinking problem and she believes he has always been honest with her.

Applicant provided five character statements from colleagues he knows through work or socially, one of whom testified at the hearing. They all endorse his application for a security clearance. In a letter dated March 26, 2007, one witness states "I have been [Applicant's] roommate over the past 7 months and I have had interactions with him on a daily basis that entire time." This witness indicated that he was aware of Applicant's past regarding abuse of alcohol and DUIs. While living with Applicant, the witness stated "[i]n the 7 months that I have lived with [Applicant] I have seen him consume alcohol only twice and I have NEVER seen him drunk, nor impaired by alcohol or any other substance." (Emphasis in original).

Applicant is financially solvent. In 2004, Applicant purchased a home for \$205,900.12 As of October 2003, he had a balance of \$2,893 in his 401(k) retirement savings plan. In March 2007, he had a balance of \$48,696 in the same retirement savings plan.

### **POLICIES**

"[N]o one has a 'right' to a security clearance." As Commander in Chief, the President has "the authority to ... control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position ... that will give that person access to such information." The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information." The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance."

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

### **CONCLUSIONS**

I have carefully considered all facts in evidence and the legal standards, and I reach the following conclusions.

## **Alcohol Consumption**

Alcohol Consumption is always a security concern because "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 Government has proved a prima facie case regarding alcohol consumption. Between 1990 and 2003, Applicant was involved in six different incidents related to his excessive consumption of alcohol, which included being charged several times with alcohol abuse and a couple of instances of being convicted of driving while intoxicated. The car accident in 2003, was quite serious. Afterwards, he was hospitalized for approximately three months, and he returned to work six months later. The accident was caused by his excessive use of alcohol, although he does not have a memory that alcohol was involved with the accident. Consequently, Alcohol Consumption Disqualifying Conditions, 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 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) apply.

Various factors can mitigate alcohol consumption. Prior to the accident in 2003, Applicant was not responsibly consuming alcohol. Since the 2003 accident, Applicant has changed his life. He barely survived his near death experience in the car accident in 2003. Accordingly, that event changed his perspective on alcohol and his life. He ceased drinking alcohol from October 2003 through February 2005. Since 2005, he occasionally has a glass of wine. Based on those facts, Alcohol Consumption Mitigating Conditions, 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)) applies. Allegations 1.a through 1.f of the SOR are found for Applicant.

## **Personal Conduct**

Personal conduct is always a security concern because "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."

The Government has not proved a prima facie case regarding personal conduct. I conclude that his 1995 incident for reckless driving, which was dismissed, does not constitute his unwillingness to comply with rules and regulations, thus raising questions about his reliability, trustworthiness, and ability to protect classified information. Moreover, regarding responses on the SF 86, Applicant testified that he was genuinely confused when responding to some questions. He believed that he only had to go back 10

years when filling out the August 2005 SF 86. Moreover, a witness credibly testified that many people get confused by the time-frames requested in the questions on the SF 86. Applicant did not deliberately falsify material facts in his SF 86. Consequently, Personal Conduct Disqualifying Condition, AG ¶ 1 6(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) does not apply. None of the other available Personal Conduct Disqualifying Conditions apply. Allegations 2.a and 2.b of the SOR are found for Applicant.

I have considered all of the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Since 2003, Applicant has modified his alcohol consumption. After a horrendous car accident in 2003, he ceased drinking until February 2005. Since then, he occasionally has a glass of wine. He has purchased a home and routinely saves for his retirement. He has been extremely responsible since 2003. Based on the evidence of record, it is clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is suitable for access to classified information.

### **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): FOR APPLICANT

Subparagraph 1.a: For Applicant  
Subparagraph 1.b: For Applicant  
Subparagraph 1.c: For Applicant  
Subparagraph 1.d: For Applicant  
Subparagraph 1.e: For Applicant  
Subparagraph 1.f: For Applicant

Paragraph 2. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant  
Subparagraph 2.b: For Applicant

**DECISION**

In light of all of the circumstances in the case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Jacqueline T. Williams  
Administrative Judge