



## SYNOPSIS

Applicant is a 25-year-old junior business analyst for a defense contractor. He admits he consumed alcohol to the point of intoxication a few times a month for over ten years. His alcohol consumption led to two driving while intoxicated offenses, being terminated from a job, and being arrested as a minor in possession of alcohol. Applicant admits to using cocaine from 2002 to 2006, and using the illegal substances of mushrooms, marijuana, and ecstasy from 1999 to 2004. His substance abuse led to treatment at a substance abuse medical treatment facility as well as after care. He deliberately did not include his drug use on his security clearance application. Clearance is denied.

## STATEMENT OF THE CASE

On December 18, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the revised Adjudicative Guidelines (AG), issued on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. The revised guidelines were provided to Applicant and he was aware that the case would be adjudicated under those guidelines. Applicant acknowledged receipt of the SOR on December 22, 2006. The SOR alleges security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on January 5, 2007. He admitted all of the allegations under the Guidelines with a detailed explanation. He requested a hearing before an administrative judge, and the request was received by DOHA on January 10, 2007. Department Counsel was prepared to proceed with the case on January 24, 2007, and the case was assigned to me on January 29, 2007. A notice of hearing was issued on February 9, 2007, and the hearing convened on February 27, 2007. Two government exhibits, marked Government exhibits 1 and 2 were received without objection. Nine Applicant exhibits, marked Applicant Exhibits A through I, were received without objection. The testimony of the Applicant and one Applicant witness were received during the hearing. DOHA received the transcript (Tr.) on March 9, 2007.

## FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

\_\_\_\_\_ Applicant is a 25-year-old college graduate and has been employed as a Junior Business Analyst for a defense contractor since October 2005. He completed a security clearance application on December 27, 2005. He has never held a security clearance.<sup>1</sup>

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<sup>1</sup>Tr. 34-35; Government Exhibit 1 (Security Clearance Application, dated December 27, 2005).

Applicant admits that from 1996 to March 2006, he consumed alcohol at times to the point of intoxication. He started drinking alcohol at the age of 15 in high school. He first drank on weekends, then went to drinking day-to-day in college starting in 1999. He drank alcohol to the point of intoxication two or three times a week while in college until graduation in 2003. After college, he drank alcohol three or four times a week to the point of intoxication until March 5, 2006. Applicant admitted he was terminated from a part time job as a bartender at a country club for excessive alcohol consumption when he came to work with the smell and affects of the previous evenings alcohol consumption. When he drank to excess, he would blackout once or twice a month.<sup>2</sup>

Applicant admitted he was arrested on September 20, 2001, for being a minor in possession of alcohol and having a fake identification card. He was ordered to attend alcohol awareness classes. He attended such class for three hours weekly for eight weeks. He was not evaluated for alcohol dependence during these classes.<sup>3</sup>

Applicant admitted he was arrested for driving while intoxicated and stopping in a roadway on February 25, 2005. After drinking about 10 to 15 alcoholic drinks, he fell asleep in his car at a traffic light. He refused to take a breathalyser test. He was convicted of the offenses and his driver's license was suspended for 90 days. He drove during the suspension, and he was sentenced to jail for 60 days suspended, paid a fine of \$600, and placed on probation for one year.<sup>4</sup>

Prior to completion of his probation for the above offenses, Applicant admitted he was arrested for driving under the influence on October 27, 2005, after he drove off a road and hit a telephone pole. His breathalyser test showed a blood alcohol level of .14. He was sentenced to jail for 180 days, suspended, fined \$1,500, and placed on probation for two years. When he went to court for this offense, his attorney appealed the February 2005 incident so both cases were processed together, and his sentence was for both offenses.<sup>5</sup> At the time of the hearing for his security clearance, he was still serving the one year probation from this offense.<sup>6</sup>

Applicant admitted using cocaine once or twice a month from 2002 until March 2006. He usually purchased the drug from individuals he knew as sellers.<sup>7</sup>

Applicant admitted using mushrooms and ecstasy as a college student from 1999 to 2003. He and his friends harvested the mushrooms from fields around their college. He knew he was using an illegal drug, and used the drug five or six times. He last used mushrooms in 2004. He used ecstasy five or six times in college. His last use of ecstasy was in 2003.<sup>8</sup>

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<sup>2</sup>Tr. 44-46.

<sup>3</sup>Tr. 36-37; Government Exhibit 2 (Criminal Information Report, dated January 11, 2006).

<sup>4</sup>Tr. 37-38.

<sup>5</sup>Tr. 39-41.

<sup>6</sup>Tr. 43.

<sup>7</sup>Tr. 50.

<sup>8</sup>Tr. 51-52.

In March 2005, one of Applicant's employers recommended he seek treatment for his alcohol abuse. He attended a few meetings of Alcoholic Anonymous but was not serious about full treatment. In March 2006, he felt he had reached a low point in his life and needed to change. He checked himself into a substance abuse treatment facility. He acknowledged to the counselors he needed treatment and professional help. He was an inpatient from March 5, 2006, until March 21, 2006. He was diagnosed by the treatment program's medical doctor and clinical social worker as

alcohol and opiate dependent. Applicant admitted he tested positive for marijuana during the treatment and regularly used opiates before he was admitted to the program.<sup>9</sup>

Applicant completed his security clearance application on December 27, 2005. In response to question 24 which asks since the age of 16 or in the last seven years, whichever is shorter, had he illegally used any controlled substance, Applicant answered "NO". Applicant used cocaine from 1999 to 2006, and mushrooms and ecstasy from 1999 to 2004. Applicant admitted he deliberately answered this question falsely because he wanted to hide his drug use, and feared if he was truthful he would not receive a security clearance and lose his job.<sup>10</sup>

Since March 2006, Applicant has a steady home environment living with his parents and brother. He stopped contact with his former friends that used drugs and alcohol with him. His social base is his family. He still has two friends who drink alcohol, but they are aware of his situation. He does not frequent places that serve alcohol. His parents do not keep alcohol in the house. From his inpatient treatment and continued attendance at alcoholics anonymous meetings, he has learned why he drank alcohol and used drugs. He knows what he needs to do to maintain sobriety. He also understands it is a daily battle. He is presently in an aftercare program under the supervision of a counselor.<sup>11</sup> He is considered an excellent worker, well-liked by his supervisors and peers. They consider that he has a bright future ahead of him.<sup>12</sup> He attends weekly alcohol anonymous meetings. He takes pride in his character and is maintaining his honesty. He takes a proactive approach to his daily substance awareness program which has a foundation in spirituality. He presently does not have a sponsor under alcoholic anonymous since his old sponsor left. But he has people he can call for assistance both at home, at work, and in social agencies. He has no desire to go back to his old life style. He wants to live the life he has established for the last year.<sup>13</sup>

## **POLICIES**

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<sup>9</sup>Tr. 54-55: Applicant Exhibit B and C (Treatment Facility letters, dated, March 21, 2006); Applicant Exhibit D (Treatment Plan, dated March 23, 2006; Applicant Exhibit E (Treatment completion certificate, dated April 2006).

<sup>10</sup>Tr. 28-29.

<sup>11</sup>Applicant Exhibit F (Continuing care plan, dated November 22, 2006).

<sup>12</sup>Applicant Exhibit I (Letter, dated February 19, 2007).

<sup>13</sup>Tr. 29-33, 58-64.

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.”<sup>14</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>15</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.<sup>16</sup> An administrative judge should consider: (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 applicant’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>17</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>18</sup> 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>19</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>20</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the

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<sup>14</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>15</sup>Directive ¶ E2.2.1.

<sup>16</sup>*Id.*

<sup>17</sup>Directive ¶¶ E2.2.1.1 through E2.2.1.9.

<sup>18</sup>*See* Exec. Or. 10865 § 7.

<sup>19</sup>Directive ¶ E3.1.14.

<sup>20</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

national interest to grant or continue his security clearance.”<sup>21</sup> The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>22</sup> “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”<sup>23</sup> “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”<sup>24</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard 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.

Guideline G - Excessive alcohol consumption often leads to the exercise of questionable judgment, failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

Guideline H - Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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<sup>21</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>22</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>23</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

<sup>24</sup>*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

Applicant's deliberate false answer to a question on his security clearance application brings the matter under Personal Conduct Disqualifying Condition (PC DC) ¶ 26(a) (*the deliberate omission, concealment, or falsification of relevant and material 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*). It is a security concern when an applicant does not include negative personal information, such as incidents of alcohol or drug abuse, on a security clearance application. Applicant considered his drug abuse an embarrassment so he did not list it on his application raising (PC DC) ¶ 16(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing*).

I considered all of the Personal Conduct Mitigating Conditions and determine none apply. Applicant does not deny his use of illegal drugs, and admits he deliberately did not list his use on the security clearance application. He knew when he answered "NO" to questions 24, he was not truthful. Any untruthfulness has a direct relationship to an applicant's judgment, truthfulness, or reliability. His action in concealing his drug abuse was done a little over a year ago, and was deliberate with an intent to deceive. I find against Applicant on the allegation under Guideline E.

Applicant's abuse of alcohol and illegal drugs creates security concerns. There is a security concern because excess alcohol consumption often leads to the exercise of questionable judgment, or the failure to control impulses, and raises concern for the individual's reliability and trustworthiness. There is a security concern for use of an illegal drug because it can raise questions about an individual's reliability and trustworthiness, and may impair judgment raising questions about the person's ability and willingness to comply with laws, rules, and regulations. An illegal drug is identified and listed in the Controlled Substances Act of 1970, as amended.

Applicant's history of alcohol consumption, his abuse of alcohol, and medical treatment for the alcohol abuse raises Alcohol Consumption Disqualifying Condition (DC) ¶ 22(a) (*alcohol-related incidents away from work, such as driving while under the influence*); DC ¶ 22(b) (*alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition*); DC ¶ 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*), and DC ¶ 22(d) (*diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*). Applicant admitted he started drinking in high school and drank to the point of intoxication an average of two to four times a week from 1996 to 2006. That is habitual and binge drinking. Applicant was arrested twice for driving under the influence of alcohol. He was fired from his job at a country club for arriving late for work with the smell and affects of drinking alcohol the previous night. He was treated and diagnosed at a substance abuse treatment facility for alcohol dependence. It is clearly established there is a security concern for Applicant's consumption of alcohol.

Applicant's admitted use of marijuana, ecstasy, cocaine, and mushrooms raises Drug Involvement DC ¶ 25(a) (*any drug abuse*); DC ¶ 25(b) (*testing positive for illegal drug use*); DC ¶ 25(d) (*diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*); and DC ¶ 25(e) (*evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment*

program). Applicant used marijuana in high school, and marijuana, cocaine, mushrooms, and ecstasy in college. He continued to use cocaine until he entered a treatment facility in March 2006. There, he was diagnosed as opiate dependent. The security concern for drug involvement is clearly established.

The mitigating conditions for alcohol consumption and drug involvement are similar since the security concerns arise from the abuse of a substance. I considered Alcohol Consumption Mitigating Condition (MC) ¶ 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*); and MC ¶ 23(b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of action taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*). I considered Drug Involvement MC ¶ 26(a) (*the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*); MC ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation or avoiding drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; ((4) a signed statement of intent with automatic revocation of clearance for any violation*); and MC ¶ 26(d) (*satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional*).

These mitigating conditions were also considered together with the “whole person concept”. I considered (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 Applicant's age and maturity at the time of the conduct, (5) the voluntariness of participation, (6) the presence or absence of rehabilitation or other pertinent 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.

I considered Applicant's candor and honesty about his drug and alcohol abuse, that he sought treatment on his own because he realized he had reached a low point in his life, his young age when he started abusing drugs and alcohol, his now gained maturity, and his continued aggressive treatment of his abuse problems. Applicant acknowledges he is an alcoholic and was drug dependent. It is extremely commendable that he has taken his abuse seriously and is working very hard to overcome his problems. He has changed his environment and actively continues his treatment to overcome his problems. He changed his living environment and his circle of friends, now depending only on family. He has established a pattern of abstinence from alcohol and drugs for over a year. All of these positive factors must be balanced against Applicant's heavy abuse of drugs and alcohol for ten years. His last abuse of alcohol or drugs was only about a year ago. It is also important to note that he lied on his security application about his drug abuse. This is a serious issue relating to his trustworthiness and reliability, even though he completed the application prior to commencing his in-patient treatment for his substance abuse. At this point, there is limited evidence to conclude that the abuse will not recur. Given his extensive history of abuse, insufficient time has passed from his treatment and starting abstinence. There is still doubt about his current reliability, trustworthiness, and good judgment. Applicant's past alcohol consumption and drug abuse still raises a security concern. More time of sobriety and freedom from drug abuse is needed for Applicant to meet his burden of showing

reliability, good judgment, and trustworthiness for access to classified information. Applicant has not mitigated security concerns for his alcohol and drug abuse, and his act of deliberately lying about the abuse. Clearance is denied.

**FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	Against Applicant
Subparagraph 2.d.:	Against Applicant
Subparagraph 2.e.:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a.:	Against Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue a security clearance for Applicant. Clearance is denied.

Thomas M. Crean  
Administrative Judge