



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



In the matter of: )  
)  
) ISCR Case No. 17-02475  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: Bruce E. Covahey, Esq.

02/27/2019

**Decision**

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the security concerns under Guideline G, alcohol consumption, Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

Applicant completed a Questionnaire for National Security Positions (SF 86)<sup>1</sup> on January 21, 2016. On September 26, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G.<sup>2</sup>

<sup>1</sup> Also known as a Security Clearance Application (SCA).

<sup>2</sup> The DOD CAF acted under Executive Order (Exec. Or.) 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on January 11, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 19, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on October 19, 2018, and the hearing was convened on November 19, 2018. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant's exhibits (AE) A through H were admitted in evidence without objection. The record was held open after the hearing to permit Applicant to submit additional documentary evidence in mitigation. Applicant submitted AE I, which was admitted without objection. DOHA received the hearing transcript (Tr.) on November 29, 2018.

### **Findings of Fact**

The SOR alleges under Guideline G, that Applicant was arrested and charged with driving under the influence of alcohol (DUI) in 2003, 2012, and 2016. It also alleges he continued to consume alcohol despite treatment in 2013 where he was diagnosed as alcohol dependent. Applicant admitted the allegations, with the explanation that he stopped drinking in March 2016, and completed a 32-day inpatient rehabilitation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 52-year-old lead test technician, employed by a defense contractor since 2005. He completed high school and electronics technician school in 1986. He honorably served in the United States Marine Corps from 1988 to 2004, including deployments to Afghanistan. He married in 1988, separated in 2008, and divorced in 2010. He has two children, one of which passed away in 2016. He previously held a top secret security clearance.

In 2003, Applicant was traveling from overseas to the U.S. for training. He was arrested for driving the wrong way on a one-way road while returning to his hotel after watching the Super Bowl. He was charged with DUI. His blood-alcohol content (BAC) was .24%. He pleaded guilty, was placed on one-year probation, fined, and ordered to perform community service. He was also referred to a military 30-day alcohol inpatient counseling program. He continued to drink and drive after separating from the Marine Corps in 2004.

In 2012, Applicant was arrested for DUI after he backed his car into another car and failed to stop. His BAC was .14%, and he was charged with DUI. He agreed to probation and treatment before judgment. He attended a 26-day outpatient counseling, and the charge was dismissed. Applicant did not believe he had a drinking problem, but was diagnosed as alcohol dependent in 2013. He was required to stop drinking during the counseling period, but he continued to drink. From 2015 to 2016, Applicant was counseled for being late to work and taking excessive Mondays off.

In 2016, Applicant was again stopped by police for traffic violations after drinking on St. Patrick's Day. His BAC was .18% and he was arrested and charged with DUI. He pleaded guilty, was sentenced to one-year probation, fined, and ordered to install an ignition-interlock device on his car for one year. He successfully completed the probation

and did not have any ignition-interlock violations. He attended Alcoholics Anonymous (AA) in 2016.

As a result of a desire to change his lifestyle, Applicant stopped drinking alcohol on March 27, 2016. He realized on Easter morning, that he needed to stop drinking and should have been in church services. He believed he was too weak to accomplish sobriety on his own, so he attended a 32-day residential recovery and treatment program (including four extra days) with 24-hour monitoring, strict supervision, daily breathalyzer tests, and certified drug/alcohol counselors. No medications were prescribed. He also voluntarily attended an additional 48-week outpatient aftercare program, which he completed in June 2017. Finally, he attended self-help meetings regularly, and was required to remain clean and sober. He stopped associating with friends with whom he drank in the past, and attended a Mothers against Drunk Driving (MaDD) victim impact panel in February 2017.

The director of Applicant's counseling program noted that Applicant made great progress in the program, was courteous, cooperative, compliant, and had demonstrated a committed willingness to address his substance use issues. He attended all required sessions regularly and with punctuality, and engaged in all counseling sessions and educational seminars. He willingly took suggestions to keep his sobriety at the forefront, and remains in contact with his counselors, attends alumni meetings, and often visits with the staff. He notes that Applicant has "truly embraced a lifestyle of recovery and expressed his excitement for his recovery." He remains steadfast in his program and is expected to remain clean and sober as long as he continues to put in the work.

Applicant's supervisor and coworkers have noted a change in Applicant after he stopped drinking. He was no longer taking Monday's off and borrowing vacation time, he requested a change in schedule to allow him to focus on changing his lifestyle and manage his home life, and has been a model employee. He is lauded for his positive attitude, reliability, and conscientiousness. Another coworker stated that Applicant was responsible, honest and ethical, and was promoted to a group lead position since 2016. Another coworker that has known Applicant for 13 years, attested to his struggles with divorce and the loss of his child, but that he has remained alcohol free and continues to maintain self-control. Finally, a long-standing friend who used to drink with Applicant, testified that he has not seen him drink in the past two years.

Applicant testified that his family has struggled with alcoholism for many years. Applicant's brother and mother testified on his behalf. Applicant has been living with his brother for five years. His brother has been sober since 1991, and has not seen Applicant drink since March 2016. His mother sees Applicant about once per week. She testified that Applicant used to spend time in bars, but now he stays away from them and has remained sober since 2016. She has seen big changes to his personality since he stopped drinking, and she can tell if he is drinking. He has helped others with alcohol problems and she is very proud of him. She said the last counseling program was the best thing that happened to him. He is now open and talkative rather than introverted; a pleasure to be around.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 have access to such information.” *Id.* at 527. The President has 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.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

## **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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. Three 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;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(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; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant's drinking history comprising alcohol-related offenses, including after treatment, meets the conditions set forth in AG ¶¶ 22(a), (c), (d) and (f).

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23, including:

(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;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; 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 acknowledges his history of alcohol abuse and years of poor decision-making. He did not respond to counseling while in the military, and did not comply with the recommendation to remain sober while undergoing the 2013 outpatient program. He was diagnosed as alcohol dependent at that time, but did not acknowledge his problem until he had a third DUI arrest. After his 2016 DUI arrest, he finally acknowledged the destructive path he was on, and his need for help. He chose to make a wholesale change to his lifestyle, renounce alcohol use completely, change the environment and friends where alcohol was used, and attend a sustained inpatient and outpatient treatment program. As a result, he stopped drinking in March 2016, remained sober, actively participated in his treatment program, and completed his probation, a MaDD panel, and ignition-interlock program.

He now has a tremendous support network of family, counselors, friends, and co-workers. His work performance and reliability have drastically improved, and he is lauded for his responsibility, honesty and integrity. He continues counseling as needed and has a positive prognosis as long as he remains abstinent. I find that sufficient time has passed since his last alcohol-related incident and despite previous failed counseling, he has maintained abstinence from alcohol since 2016. I am persuaded he will continue his lifestyle changes, counseling, and abstinence. His actions since 2016 have served to mitigate his past behavior. His alcohol abuse is finally behind him, and further lapses in judgment due to alcohol are unlikely to recur.

Applicant's alcohol-related issues appear to be under control, and no longer cast doubt on his current reliability, trustworthiness, or good judgment as long as he maintains compliance with his treatment regiment including complete abstinence from alcohol. I find AG ¶¶ 23(a) and (b) apply, and (c) and (d) substantially 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 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 considered Applicant's military service, stellar work performance over the past two years, and his alcohol-abuse treatment and follow-on care through active participation in counseling and his abstinence from alcohol since 2016. Although Applicant has significantly struggled with his behavior when drinking, he appears to be on the right track. I am convinced that Applicant has sincerely changed his behavior, has learned from his past transgressions, benefited from treatment, his support network and the use of the ignition-interlock device, and is committed to life-long sobriety. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance.

## **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.d:	For Applicant

## **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge