DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-00629
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: Stephen M. Jewell, Esq.

05/03/2019

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Decision

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MURPHY, Braden M., Administrative Judge:

Applicant's history of alcohol involvement includes a June 2015 DUI with a high blood-alcohol content, a 2015 diagnosis of a severe alcohol use disorder, and evidence of continued alcohol consumption. It is Applicant's burden to mitigate the security concerns established by his actions and his serious alcohol use disorder. He has resumed drinking, despite his diagnosis. He has indicated an intent to resume counseling, as recommended to avoid relapse or alcohol abuse, but has not yet done so. Applicant did not provide sufficient information to mitigate Guideline G security concerns. Eligibility for continued access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 8, 2017. On June 7, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guideline G, alcohol consumption. The DOD CAF took the action 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), and the Security

Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented by DOD on June 8, 2017.

Applicant answered the SOR on August 14, 2018, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA).[1] His Answer included 11 enclosures (Ans. Encl. 1-11), included in the record without objection. The case was assigned to me on November 13, 2018. On November 21, 2018, DOHA issued a notice of hearing scheduling the case for December 12, 2018.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through GE 8, which were admitted without objection. Applicant's Exhibits (AE) A through G were also admitted without objection. Applicant and five witnesses testified. I left the record open after the hearing to provide Applicant the opportunity to submit additional evidence. He timely submitted five additional exhibits, which were marked and admitted without objection as AE H through L. The record closed on January 10, 2019.[2] DOHA received the transcript (Tr.) on January 2, 2019.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.c, and 1.e. He admitted SOR ¶¶ 1.b and 1.d in part and denied them in part.[3] His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He is a retired U.S. Air Force officer and F-16 pilot who is employed by a defense contractor. He and his wife have been married since 1995. They have three children, ages 22, 21, and 10. Applicant earned a bachelor's degree in 1993 and a master's degree in 2005. He served in the Air Force from 1993 to 2016, retiring as a lieutenant colonel. Rated as a "command pilot," he had over 2,500 flying hours and more than 300 hours flying over combat zones in Iraq and Afghanistan. He has worked for his employer in the defense industry since May 2016, as the deputy director of one of the company's divisions. He has held a security clearance for 26 years

[1] When he answered the SOR, Applicant did not formally "admit" or "deny" the allegations. I noted this in an e-mail to counsel before the hearing, and Applicant addressed each allegation during hearing preliminaries. (Hearing Exhibit (HE) I; Tr. 10-14)

[2] Post-Hearing e-mail correspondence between myself and the parties is marked as HE IV. On December 21, 2019, when he provided Applicant's post-hearing submissions, counsel requested "an indefinite delay in your ruling in order to provide ongoing updates" from Applicant's counselor. I declined to hold the record open indefinitely for submission of evidence on an ongoing basis. DOD Directive 5220.6 ¶ E.3.1.10 states that "[t]he Administrative Judge . . . shall conduct all proceedings in a fair, *timely*, and orderly manner." (Emphasis added) Additionally, ¶ E3.1.25 states that "The Administrative Judge shall make a written clearance decision in a timely manner . . ." An applicant is not entitled to a delayed or deferred adjudication of his or her security eligibility. ISCR Case No. 10-07892 at 2 (App. Bd. Sep. 7, 2011); ISCR Case No. 09-02926 at 2 (App. Bd. May 11, 2010).

[3] Applicant's partial denials as to SOR ¶¶ 1.b and 1.d largely concerned the fact that the allegations misidentified the facility where he was treated and diagnosed. He otherwise admitted the substance of the allegations. (Tr. 12-13, 28-29)

since he was commissioned as an Air Force officer. (Tr. 16, 53, 122-123, 159-162; Ans. Encl. 11; SCA; AE G)

Applicant discussed his historical drinking pattern in his background interview. He was a social and weekend drinker in college. He drank alcohol sporadically in the Air Force until about 2012, when his drinking increased significantly after his wife became seriously ill. Applicant dealt with the resulting stress by drinking frequently as a coping mechanism. He said in his background interview that during this period, he consumed four to six glasses of beer or wine on a daily basis. (Tr. 165; GE 2 at 12) At hearing, Applicant testified that his drinking became "unhealthy" sometime in early 2015, and that he was drinking habitually, four or five times a week at the time. (Tr. 145-147) He said no one came to him at the time and said he was drinking too much, nor did he realize that himself. (Tr. 190-191)

In June 2015, Applicant was stationed at a military base near where he now lives, in State 1. He went to another state, State 2, to attend a conference. The night before he was to return, he consumed eight to ten alcoholic drinks over a five-hour period, alone in his hotel room. He had been working out beforehand, and had nothing else to eat or drink. (Tr. 162-164; GE 2 at 11)

Applicant went to sleep after midnight. He woke at about 3:30 am and drove to the airport for his return flight. While en route, he became disoriented and entered an interstate highway by driving the wrong way down the exit ramp. He was stopped by police after he was seen driving eastbound in a westbound lane. (Tr. 123-125, 163-164; GE 2 at 11; GE 7 at 1)

Applicant was administered a breathalyzer test at the scene and registered a blood alcohol content (BAC) of .225. Results of a blood test later showed a BAC of .28. He was arrested and initially charged with driving under the influence (DUI) and reckless driving under State 2 law. (SOR ¶ 1.a) (Tr. 125; GE 7 at 1; GE 2 at 7, 11)

Applicant immediately disclosed his arrest to his command. Upon returning, he was referred to the Air Force Alcohol and Drug Abuse Prevention Treatment (ADAPT) program and diagnosed in early July 2015 with a severe alcohol use disorder after meeting 8 of the 11 criteria for alcohol use disorder under the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). (Tr. 126, 131, 144, GE 4 at 1)

Applicant then entered recommended inpatient treatment at the Substance Abuse Rehabilitation Program (SARP) at a local Navy hospital. (SOR ¶ 1.b)[4] While his attendance was voluntary, he was also told that if he chose not to enter inpatient alcohol treatment, the Air Force would begin administrative separation proceedings. While he

[4] SOR ¶ 1.b alleges that Applicant was diagnosed with alcohol use disorder, severe, while in inpatient treatment at the Navy's SARP program, when in fact, the initial diagnosis was made during his initial alcohol evaluation by Air Force ADAPT providers. (Tr. 131; GE 4 at 2). While there is no documentation of SARP's diagnosis, Applicant testified that SARP accepted the diagnosis he received from the Air Force, "and just put me into treatment." (Tr. 150)

initially preferred outpatient treatment, he also recognized that he had a problem with alcohol, so he was "easily convinced and ready to get help." (Tr. 126-127, 130, 135, 149-150, 166; GE 1 at 38, 46).

Applicant was in inpatient treatment at SARP for 30 days in July and August 2015. He was considered "an active and motivated member of treatment groups," and he successfully completed inpatient treatment in August 2015. (Tr. 131, 151, GE 4 at 2; GE 5; Ans. Encl. 3)

Applicant's continuing care and aftercare plan developed by ADAPT in August 2015, which he acknowledged by signature, detailed certain requirements over the next 12 months. They included: 1) abstinence from alcohol; 2) participation in at least one to three self-help group meetings per week (Alcoholics Anonymous, or "AA"); 3) weekly follow-up counseling with his ADAPT counselor; and 4) participation in a formalized continuing care group on a weekly basis for the next 12 months. (Tr. 131-132, 151-153; GE 5 at 2-3)

Applicant testified at hearing that his abstinence "was unrelated to the treatment" he received at SARP, but was instead "related to me wanting to fly again." (Tr. 151; Ans. Enc. 3) The documentary record says otherwise, however, as abstinence from alcohol is the first requirement listed in the ADAPT program. (GE 5 at 2)

After inpatient treatment, Applicant transitioned to the ADAPT continuing-care abstinence group, where he continued treatment on a bi-monthly basis. He met with a counselor to discuss treatment goals (maintaining abstinence from alcohol, improving stress management skills and improving his marriage). He attended meetings with a local alcohol-abstinence support group, what he called "AA for aviators," became more engaged at church, and began marital counseling. (Tr. 131-133, 167-169; GE 4 at 2; Ans. Encl. 3)

In September 2015, Applicant received a letter of reprimand from his commanding officer as a result of his arrest. (SOR ¶ 1.c) The letter noted that, in addition to the civilian charges of DUI and reckless driving, he was also in violation of Article 111 of the Uniform Code of Military Justice (UCMJ) for drunken operation of a vehicle. (GE 7 at 1) A determination was made to adjudicate Applicant's DUI in State 2 criminal court, so Applicant was not formally charged by military authorities. (Tr. 126-128; GE 2 at 7)

In October 2015, after two months in continuing care, Applicant transitioned to the aftercare phase of the ADAPT program. (SOR ¶ 1.d)[5] During this phase, he met monthly with his ADAPT program manager, an Air Force captain in the Biomedical Service Corps (BSC). He also continued attending other support groups, including the

[5] SOR ¶ 1.d alleges that Applicant received aftercare treatment with ADAPT at the Navy hospital from August to October 2015, and was again diagnosed with alcohol use disorder, severe. In fact, Applicant began the Aftercare program in October 2015, after two months in the "continuing care abstinence group," and the program was run by the Air Force, not the Navy. Applicant said he did not recall a "new diagnosis" at that stage. (Tr. 152)

"AA for aviators" program. He abstained from alcohol throughout the program, verified by lab tests. (Tr. 131-133, 154, 167-169; GE 4 at 2; GE 6; GE 7 at 3-6; Ans. Encl. 3)

In February 2016, Applicant requested an updated alcohol evaluation from ADAPT in order to maintain his flight status. His DSM-V diagnosis at that time was alcohol use disorder, severe, in early remission, because he had no demonstrated symptoms for "longer than three months but less than one year." (GE 4 at 3-4)

The ADAPT providers noted that, given the "beneficial and socially supportive nature" of Applicant's participation in marital therapy and the "AA for aviators" group,

> it is recommended that he continue to engage in these therapeutic outlets in the future (i.e., post-ADAPT treatment), in order to continue his upward prognostic trajectory and best assist him in the maintenance of his abstinence as well as the continued remission of his condition.[6]

Given this evidence, and given Applicant's stated desire to maintain a sober lifestyle and to continue progressing towards recovery, his prognosis was regarded as excellent. It was estimated that in the absence of relapse, his condition would eventually meet the criteria for alcohol use disorder, severe, in sustained remission if he demonstrated no symptoms for over a year. (GE 4 at 4)

Applicant was allowed to maintain his flight status. (Tr. 132-133, 161, 170) He was subject to a retirement grade determination but was allowed to retire from the Air Force as a lieutenant colonel in early May 2016.[7] (GE 2 at 7; Ans. Encl. 5; AE A – AE C)

Applicant did not complete the Air Force's ADAPT aftercare program because he retired from the Air Force. (Tr. 137, 181) The record does not indicate that Applicant pursued a civilian alternative to the ADAPT program once he retired.

Applicant's DUI case in State 2 remained pending until February 2017, when he pleaded guilty to one count of DUI, extreme BAC, .15 – .19. The remaining charges, a) DUI; b) DUI – liquor BAC .08 or more; c) DUI extreme BAC .20 or more; and d) reckless driving) were dismissed. (GE 3; GE 1 at 40-41) Applicant was sentenced to 12 months of unsupervised probation, which he completed. He was ordered to pay about $3,000 in fines, fees, and costs, which he did in October 2017. He had an ignition interlock device installed on his car from May 2017 to May 2018, and had no violations. He attended a Mothers Against Drunk Driving panel. He was not under any pre-trial restrictions from State 2 authorities before he pleaded guilty, and was not required to abstain from alcohol while on probation. (Tr. 128-129, 155-158, 171-175; GE 1 at 41-42; GE 3; AE H)

[6] GE 4 at 4 (emphasis added)

[7] In March 2016, DOD CAF issued Applicant a Memorandum of Intent (MOI) to revoke his security clearance, alleging security concerns due to the DUI arrest. As a result, his security clearance was suspended. Applicant responded to the MOI on March 15, 2016. (GE 8) Because he retired from the Air Force soon thereafter, it does not appear that the March 2016 MOI was ever adjudicated. (Tr. 189-190)

Applicant resumed drinking after leaving the Air Force. He said in his background interview that he resumed drinking in June 2016 (about one year after the DUI). (GE 2 at 12) At hearing, he said he resumed drinking around his birthday, in September 2016 (about 15 months after the DUI). (Tr. 134-136, 158, 176-177)

Applicant testified that his current pattern of consumption is to have two to three drinks about two or three times a week. He described his pattern as social drinking with family and friends, such as on weekends watching football, and a drink on special occasions, such as birthdays or holidays. (Tr. 137-138, 177-178; GE 2 at 2, 12) He said when he is on business travel, he takes customers out and will "probably have a couple more drinks than my average." (Tr. 138)

Applicant's renewed consumption of alcohol is alleged as a security concern, as it post-dates his treatment for alcohol use disorder. (SOR ¶ 1.e) In an affidavit submitted with his Answer to the SOR, he reported that:

> [Applicant's mental health doctor during ADAPT treatment] knew I was abstaining from alcohol during treatment and that I was hitting or exceeding all of my progress goals. My doctors also knew I had not made a decision as to whether I would abstain forever, and complete abstinence was never a mandatory part of my long-term treatment plan. In fact, I recall several treatment sessions where we discussed that living sober did not necessarily mean living dry.[8]

Applicant also stated in his affidavit that he was required to abstain from alcohol only as long as he was on flight orders, though this was "not an official part of my treatment plan." (Ans. Enc. 3 at 2) He asserted in his affidavit that his resumed social drinking has been safe and responsible, and without any adverse issues, either personally or professionally. Applicant also attested that "my responsible consumption of alcohol is completely in line with my treatment plan, as explained to me by my doctors when I completed treatment." (Ans. Encl. 3 at 2) He testified that he was never told by his doctors that he could never drink alcohol again. (Tr. 133, 158, 171) Applicant was not told by anyone else that he is drinking too much. (Tr. 191) These statements are unsupported by updated corroborating documentation. Applicant did not indicate that he currently drinks to intoxication, and he reported no additional alcohol-related offenses or "negative incidents." (Tr. 138, 176; GE 2)

After retiring from the Air Force, Applicant continued marital counseling. He also supported his wife as they sought medical care at various hospitals for her medical conditions, as they raised their three children. He began a busy travel schedule in his current job. Applicant attended the "AA for aviators" support group for about a year and benefitted from it, but stopped going in part because it was geographically difficult to get there. (Tr. 182-183: GE 2 at 12) Applicant offered no evidence at hearing that he is

[8] Ans. Encl. 3; *see also* Tr. 133-134.

currently participating in AA or any similar counseling group, nor did he indicate sustained involvement with a formal support network to help him address his drinking.

Applicant testified that after the DUI, he was prohibited from driving in the county in State 2 where the offense occurred. (Tr. 174) Shortly before his DOHA hearing, he was on a business trip in another state, and was told that his driver's license was about to expire, which he had not noticed. Even though he had lived in State 1 for several years, he still had a driver's license from State 3, where he had served in the Air Force from 2007 to 2010. (GE 1 at 17) When he sought to get a new license, he learned that his State 3 driver's license had been suspended as a result of the DUI. Applicant testified that he was unaware of this, and said that he did not drive until his license was renewed. (Tr. 183-188)

After the hearing, Applicant presented documentation from State 3 of an alcohol assessment he underwent in November 2018 in order to have his driving privileges renewed there (a prerequisite for getting a valid license in State 1). He testified that he was issued a valid driver's license from State 1 a few days before his hearing. (Tr. 183-188)

The assessment is from a licensed professional counselor (LPC) in State 1. (AE J; AE L) She met with Applicant for one hour, in November 2018. (AE I) The assessment summarizes the procedural history of the DUI case in State 2, Applicant's treatment and counseling, retirement from the Air Force, and the requirements of his probation. The assessment does not mention Applicant's June 2015 diagnosis of a severe alcohol use disorder, or the February 2016 diagnosis that his disorder was in early remission at that time. The documentation does not include an updated diagnosis of Applicant's alcohol use disorder.

With respect to a prognosis, the assessor finds that Applicant "did not present as a risk to himself or others regarding the use of alcohol." The LPC found that Applicant demonstrated that "he is managing his stress level and appears to be functioning within normal limits at this time." (AE J at 15/26)

The assessor noted, however, that a "plan should be in place for [Applicant] to manage his stress levels and not [succumb] to relapse or alcohol abuse." (AE J at 13/26) Counseling was recommended to help him manage his stress and his wife's health issues. (AE J at 16/26) After the hearing, Applicant e-mailed the LPC and said he wanted to begin counseling with her. (AE K) There is no indication of additional counseling with the LPC as of the date the record closed.

In his testimony, Applicant acknowledged his poor judgment the night of the DUI. He referred to the event as "life-changing." He intends to continue making "good personal decisions" and relying on his support network of family, friends and counselors going forward. He is also very patriotic, and understands the security significance of his actions. He accepted responsibility for his actions and was remorseful. (Tr. 123, 139-143)

Two witnesses from Applicant's current employment testified. Witness 1 (W1) is a senior lead engineer for Applicant's employer. Applicant is one of his supervisors, but they work in separate geographic areas. Witness 2 (W2) is the facility security officer (FSO) for Applicant's employer and several of its subsidiaries. (AE D) He served in the Air Force for 30 years, retiring as a master sergeant. Both W1 and W2 have had clearances for many years. Applicant's work performance is "beyond reproach" and "stellar." Applicant has been upfront about the DUI, and uses it as a cautionary tale for others. The incident had a "huge impact on him." W1 and W2 are aware that Applicant abstained from alcohol for a year and has resumed drinking. As the FSO, W2 has had interaction with others who have had alcohol issues. He noted no "telltale" signs of alcohol issues with Applicant. He said it would be a security concern if Applicant had repeated alcohol issues, but he had none, but for the DUI. Both W1 and W 2 rate Applicant a "10" (on a 1-10 scale) for national security trustworthiness and suitability. (Tr. 37-49; (Tr. 50-55; AE D)

Two other witnesses testified who had firsthand knowledge of the DUI and its aftermath. Witness 3 (W3) and Witness 4 (W4) are both retired Air Force colonels. W3 was the deputy division chief at the Air Force command where Applicant served at the time of the DUI. W4 was Applicant's supervisor at the time, and he issued Applicant GE 7, the letter of reprimand. Applicant's performance at the command was "outstanding" and "exemplary." Both W3 and W4 recommended that Applicant retain his rank at retirement. (AE A; AE B) W3 testified that he has "absolute faith and trust" in Applicant, and he provides a valuable service to the Air Force in his position. W3 regards Applicant as a "fine gentleman." (Tr. 71-108)

W4 is aware of Applicant's participation in alcohol treatment. W4 said that Applicant's professionalism "never wavered" after the DUI. He said Applicant was forthcoming, admitted his mistakes, and wanted to move forward from them. W4 believes Applicant has learned "a tremendously difficult lesson." Applicant's judgment, trustworthiness, and reliability are "upstanding [and] of the highest order" and he believes Applicant should have a clearance. (Tr. 89-108; AE B; AE E)

Witness 5 (W5) is Applicant's brother. He testified by phone. He is a police sergeant in a large U.S. city. He is professionally experienced with the importance of confidentiality, privacy, and the protection of sensitive information. W5 testified that Applicant is a loving father and family man with excellent character. (Tr. 111-113) W5 is aware of the DUI, but has never known Applicant to otherwise behave irresponsibly with alcohol. W5 is aware of Applicant's alcohol treatment, his one year of abstinence, and the fact that he has resumed drinking. It does not cause W5 concern with respect to Applicant's ability to safeguard secrets. W5 considers his brother a role model and "moral compass." He has always admired Applicant's patriotism, dedication, and commitment to his family. (Tr. 111-119)

Policies

It is well established that no one has a right to a security clearance.[9] As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."[10]

The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(c), the entire process is a conscientious scrutiny of a number of variables 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." Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the 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 security concern for alcohol consumption is set forth 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.

[9] *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988)

[10] 484 U.S. at 531.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following disqualifying conditions are potentially applicable in this case:

> (a) alcohol-related incidents away from work, such as driving while under the influence . . . 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) or alcohol use disorder;
>
> (e) the failure to follow treatment advice once diagnosed; and
>
> (f) alcohol consumption which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant was a social and weekend drinker until about 2012, when his drinking increased significantly after his wife's chronic medical condition began to cause stress and strain on both Applicant and his wife, and he turned to alcohol as a coping mechanism. By 2015, he was having several drinks, several days a week, and reached what he acknowledged was an unhealthy level of drinking. His June 2015 arrest for DUI occurred after a night of binge drinking. He was arrested and charged with multiple DUI offenses, and pleaded guilty to one count of DUI, extreme BAC, .15 – .19. AG ¶¶ 22(a) and 22(c) apply.

SOR ¶¶ 1.b and 1.d concern Applicant's diagnosis of a severe alcohol use disorder, severe, and his related inpatient treatment and participation in aftercare. Applicant admits that he was initially diagnosed by Air Force ADAPT providers during his initial assessment after the DUI, and that the diagnosis was accepted by the Navy SARP personnel. Applicant's inpatient treatment and aftercare do not constitute disqualifying conduct, and no AGs apply. The diagnosis itself, as alleged in SOR ¶ 1.b, is established, and it satisfies AG ¶ 22(d).

Applicant testified that he did not receive a "new diagnosis" from ADAPT providers, either during continuing care or aftercare, after he left inpatient treatment in August 2015. Nor does the record contain any such documentation, either from the Navy (as alleged in SOR ¶ 1.d) or from Air Force ADAPT providers. Even if it were established, such a diagnosis would largely have confirmed the initial diagnosis in SOR ¶ 1.b, made only a few weeks or months earlier. As such, it would be essentially duplicative. Regardless, SOR ¶ 1.d is resolved for Applicant.

Applicant's letter of reprimand, while a direct and negative consequence of his DUI, also does not constitute disqualifying conduct under Guideline G. SOR ¶ 1.c is therefore found for Applicant.

SOR ¶ 1.e alleges a security concern because Applicant "continue[s] to consume alcohol, notwithstanding [his] treatment for a condition diagnosed as Alcohol Use Disorder." Applicant admitted SOR ¶ 1.e. SOR ¶ 1.e does not allege that Applicant's resumed consumption of alcohol was contrary to treatment recommendations; indeed, he asserted that he was only required to abstain from alcohol only in order to maintain his flying status. Nevertheless, Applicant's ADAPT providers recommended in February 2016 that he continue with therapy and the "AA for aviators" program, including after ADAPT, "in order to continue his upward prognostic trajectory and best assist him in the maintenance of his abstinence as well as the continued remission of his condition." (GE 4 at 4). Applicant did not provide sufficient evidence that he followed these recommendations. AG ¶¶ 22(e) and 22(f) therefore apply to SOR ¶ 1.e.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. 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;
>
> (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 required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

The most recent diagnosis in the record is from February 2016, when ADAPT providers concluded that Applicant's severe alcohol use disorder was in early remission. This was based on his ongoing abstinence, participation in counseling, as well as a stated desire to maintain a sober lifestyle and to continue progressing towards recovery. He had an excellent prognosis for continued progress, and he would eventually be "in sustained remission" if he continued to demonstrate no symptoms for over a year.

Applicant did not complete the Air Force's ADAPT program and did not find a civilian alternative. He was in the "AA for aviators" program for a time but is not participating currently. He therefore did not follow the therapeutic recommendations of his ADAPT providers after leaving the program. He also resumed drinking, thereby stopping the "upward prognostic trajectory" towards sustained remission of his condition. AG ¶ 23(d) does not apply.

After the hearing, Applicant contacted the LPC who did the assessment he needed to renew his driver's license, and indicated an interest in pursuing counseling with her. But that counseling had not begun when the record closed, so AG ¶ 23(c) does not apply.

Applicant resumed drinking alcohol about a year after his inpatient treatment and diagnosis. He resumed drinking in either June 2016, as he indicated in his background interview, or at the latest in September 2016 (his birthday), as he testified. His subsequent drinking pattern has been to have two or three drinks at social and family occasions, two or three times a week. He also acknowledged consuming "a couple more drinks than my average" while out with business customers. The February 2016 diagnosis was based largely on abstinence as well as continued participation in counseling and a stated desire for continued sobriety. Applicant's resumed drinking undercuts the favorable prognosis he had at the time, and has not been shown to be in accordance with treatment recommendations.

The November 2018 assessment does not address Applicant's diagnosis specifically. The assessor found that Applicant is not at risk to himself or others regarding use of alcohol. This is similar to a favorable prognosis, though the LPC does not call it that specifically. However, as the assessment also acknowledges, Applicant needs a safety net of counseling to manage stress and to avoid succumbing to relapse and alcohol abuse. That safety net is not in place, though Applicant has expressed a desire to pursue counseling. Without established compliance with such counseling, the risk of relapse remains, as the assessor noted. This is particularly so since Applicant has resumed drinking despite his diagnosis, and despite the recommendation to continue counseling and abstinence after ADAPT.

Applicant has had a single DUI, though a very serious one. There is no indication that he drinks to intoxication, and there have been no further alcohol-related offenses since. Even so, there is ample Appeal Board precedent for finding that resumed drinking, even moderate drinking, after a diagnosis of alcohol use disorder, severe, and against clinical recommendations, can support a conclusion that an applicant has not demonstrated sufficient rehabilitation to overcome the security concerns about his alcohol involvement.[11]

Applicant's resumed social drinking is against the clinical advice of his ADAPT providers, and he did not sufficiently document that he has received a subsequent diagnosis under which his established pattern of modified consumption of alcohol is in

[11] *See, e.g.*, ISCR Case No. 18-00782 at 3 (App. Bd., Feb. 15, 2019); ISCR Case No. 14-05002 at 4 (App. Bd. Mar. 9, 2016); ISCR Case No. 04-10457 (App. Bd. Apr. 27, 2007).

accordance with treatment recommendations. AG ¶¶ 23(a) and (b) do not fully apply. Applicant did not provide sufficient evidence to mitigate the alcohol involvement security concerns.

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 relevant 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.

Having observed his demeanor at hearing, I do not doubt that Applicant has been significantly affected by these events. I am also mindful of his brave and honorable service in uniform for many years and as an F-16 pilot under stressful, dangerous conditions, including over combat zones. I also considered the strong whole-person evidence provided by his character witnesses.

But it is Applicant's burden to mitigate the security concerns established by his actions and his serious alcohol use disorder. On this record, that is not established. Applicant resumed drinking, despite his diagnosis. While his drinking is otherwise moderate, he did not meet his burden to establish at this time that the security concerns stemming from his alcohol involvement are fully resolved, or are unlikely to recur. As the assessor noted, Applicant needs to have a safety net in place to manage his stress levels and to avoid succumbing to relapse or alcohol abuse. He has indicated an intent to resume counseling, but has not yet done so. With time, Applicant may establish a sufficient track record of modified consumption or abstinence in accordance with treatment recommendations, aided by demonstrated participation in sustained counseling. If so, reconsideration may be warranted at a later date. At this time, however, I am not persuaded that Applicant has provided sufficient evidence to establish that his serious alcohol issues are unlikely to recur, and are no longer a

security concern. Overall, the record evidence therefore leaves me with questions and doubts as to Applicant's continued eligibility 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant continued eligibility for a security clearance. Eligibility for continued access to classified information is denied.

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Braden M. Murphy
Administrative Judge