



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00663
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

02/26/2019

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**Decision**

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Gregg A. Cervi, Administrative Judge

This case involves security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) dated October 20, 2016. On June 26, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline G.<sup>1</sup> He answered the SOR and elected a decision based on the administrative record. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on October 5, 2018.

<sup>1</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.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 23, 2018, but did not submit a response. The Government's exhibits included in the FORM (Items 1 to 6) are admitted into evidence without objections. The case was assigned to me on February 8, 2018.

### **Findings of Fact**

Applicant is a 42-year-old systems specialist employed by a government contractor since 2016. He graduated from high school in 1994. Applicant married in 1993 and divorced in 2003. He remarried in 2004 and divorced in 2015. He has four children. This is his first application for a security clearance.

The SOR alleges Applicant has consumed alcohol to excess to at least November 2017. In May 2017, he was admitted to a hospital for a heart condition, and was treated for five days in an alcohol-detoxification program. In September 2017, he was arrested for driving while intoxicated (DWI). Applicant admitted the excessive drinking and detox treatment allegations, but denied the DWI arrest because he was not prosecuted. The Government's documentary evidence is sufficient to support the SOR allegations.

Applicant was interviewed by a government investigator in June 2017. He stated that in March 2017, he was placed on medical leave from his work to address health issues. He was on bed rest for 60 days, and developed depression. He started consuming alcohol heavily, including up to a fifth of whiskey a day. His spouse urged him to seek treatment after Applicant thought he was having a heart attack. He underwent a five-day inpatient alcohol-detoxification program and was treated for depression. He was prescribed Wellbutrin and Effexor, which he still uses. Applicant returned to work in May 2017. At that time, he described his current use of alcohol as "minimal," to include one-to-two shots of whiskey a month.

In September 2017, Applicant was arrested for DWI. He began drinking at home where he consumed about four to five shots of vodka over one to two hours. When he ran out, he drove to a store for another pint of vodka. Applicant was stopped by police for a traffic violation, was arrested, and held overnight. Applicant immediately referred himself to a 24-day inpatient alcohol treatment program. The prosecutor did not pursue the DWI charge.

Applicant was re-interviewed by a Government investigator in November 2017, where he disclosed his DWI and alcohol-detoxification treatment. He also disclosed that he enjoys drinking alcohol, and now consumes one to two pints of vodka per week, which is less than the pint every one-two days that he previously consumed. He stated that he is decreasing his alcohol use, and is continuing his counseling and the medications for depression. He admitted using poor judgment when he drove after consuming alcohol, and stated he will not do so in the future.

Since Applicant elected a decision without a hearing, I was unable to inquire further into his alcohol use, treatment, alcohol-related arrest, medical evaluations, prognosis, and any changes in lifestyle.

### **Law and Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. These AGs are applicable to this decision.

“[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**

The security concern for alcohol consumption is set out in AG ¶ 21:

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

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

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

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

Applicant has a history of excessive alcohol consumption and alcohol-related incidents that led to a five-day detoxification and DWI arrest while his security clearance eligibility was pending. The above disqualifying conditions apply.

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 any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant's history, as detailed in the findings of fact, indicates a pattern of excessive use of alcohol, before and after treatment. Applicant has attended two inpatient alcohol-treatment programs, but has not submitted any medical evaluations, diagnosis, or prognosis to favor application of mitigating conditions. Despite attending an alcohol-detoxification treatment program in March 2017, after applying for a security clearance, he continued to drink to excess. He was interviewed by a Government investigator in June 2017, and was arrested for DWI in September 2017. He again attended alcohol counseling and continues to consume alcohol.

The record is devoid of substantial evidence of a change in behavior, and efforts to ensure that no further alcohol related incidents will occur. I am not convinced that Applicant has his alcohol consumption under control, and that further alcohol-related incidents are unlikely to recur. None of the mitigating conditions fully apply, and Applicant has not proffered sufficient evidence of rehabilitation and a change in lifestyle to overcome concerns about his established pattern of excessive alcohol use.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline G in my whole-person analysis. Applicant's history of alcohol-related incidents and failure to show credible rehabilitation and a changed lifestyle remain an ongoing concern.

### **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.c:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

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Gregg A. Cervi  
Administrative Judge