



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 18-00941  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: Troy L. Nussbaum, Esq.

09/16/2019

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the security concerns related to his alcohol-related incidents and involuntary military discharge. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 12, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). The action was taken 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on August 3, 2018, and elected to have a hearing before an administrative judge. The case was assigned to me on November 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing (NOH) on December 21, 2018, scheduling the hearing for February 21, 2019. I convened the hearing as scheduled.

With no objection, I granted Department Counsel's motion to amend SOR ¶ 1.c by striking the last full sentence, which reads: "After a witness notified the police, you initially denied that you were the driver of the vehicle." Government Exhibits (GE) 1, 3, and 6 were admitted in evidence without objection. Applicant objected to GE 2, 4, and 5 on the basis that the documents constituted hearsay and were not business records. I overruled Applicant's objections and admitted GE 2, 4, and 5 in evidence. Applicant objected to GE 7, a Report of Investigation (ROI), on the basis of DOD Directive ¶ E3.1.20 and Department Counsel withdrew the exhibit. Applicant objected to GE 8 on the basis that the documents were duplicative and irrelevant. I overruled Applicant's objection and admitted GE 8 in evidence. Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through N, which were admitted in evidence without objection. (Tr. at 8-9, 12-27).

At Applicant's request, I held the record open until March 7, 2019, for the receipt of additional evidence. By email on March 5, 2019, Applicant stated that he did not have any additional documentation. DOHA received the hearing transcript (Tr.) on March 4, 2019.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. His admissions are incorporated in my findings of fact. He is 27 years old, married, and he has one child, a minor. He has owned his home since approximately 2018. (Answer; Tr. at 9, 45-66, 85; GE 1; AE I).

Applicant graduated from high school in 2010. He earned a bachelor's degree from The U.S. Military Academy at West Point (West Point) in 2014 and was commissioned as a second lieutenant in the U.S. Army. He was involuntarily honorably discharged in November 2016. He was unemployed until March 2017, when he became a systems engineer for his current employer, a defense contractor. As of the date of the hearing, he was pursuing his master's degree and expected to obtain it in May 2020. He has held a security clearance since 2011. (Tr. at 6-7, 85-90, 96-100, 105-115, 144-146, 163; GE 1, 4, 5, 6; AE D, F, I, K, M, N).

Applicant began consuming alcohol when he was a senior in high school. He drank a few beers on occasion. He did not consume alcohol during his first year at West Point, but drank about five to seven beers on the six to seven occasions when he was on leave from West Point during his second year. His leave increased during his third year and he drank five to seven beers on 12 to 14 occasions. By his fourth year, he consumed six to nine beers approximately once monthly. (Tr. at 164-167; AE I).

In November 2014, Applicant was cited with public drunkenness. He was a 22-year-old flight school student. He described his level of alcohol consumption during this period as the same as his fourth year at West Point. He and his classmates had just completed their two-month basic officer leadership course and decided to attend a

weekend college football game during their two week break to “blow some steam off.” He drank beer and mixed drinks from early in the day while tailgating, fell asleep sometime after the game commenced, and was wakened by a campus police officer for sleeping in public and taken to a local drunk tank to get sober. He was cited, pled no contest, and paid his fine. He “laid low” from consuming alcohol for a while because he was upset and ashamed of himself. (SOR ¶¶ 1.a, 2.a, 3.a; Tr. at 90-96, 100-103, 146-147, 167-168, 171-172; GE 1; AE I).

From November 2014 to April 2016, Applicant was “deep into the training of flight school.” He and his classmates consumed alcohol at a friend’s house or a local bar to “enjoy the free time that we did have.” By January 2016, his alcohol consumption had increased to eight to ten beers every weekend. In April 2016, he was arrested and charged with driving under the influence (DUI). This was his first DUI. He was 23 years old and a first lieutenant in the U.S. Army. He was less than one week from flight school graduation and felt “on top of the world . . . a little bit invincible.” He attended a party at a friend’s house with the intention of spending the night. He consumed beer and mixed drinks and drove home. The police stopped him after he took “a right-hand turn out of the straight-only lane” and then a “left-hand turn without signaling my turn.” Upon his arrest, he initially denied having consumed alcohol out of fear, but then admitted to drinking during his field sobriety test. His blood alcohol content (BAC) was .16%. (SOR ¶¶ 1.b, 2.a, 3.a; Tr. at 60, 90-96, 103-117, 147-154, 158-161, 168-169, 172-173; GE 1, 2, 4, 5, 6, 8; AE I, J, M, N).

The DUI was nolle prossed. The U.S. Army revoked Applicant’s driving privileges; issued him a General Officer Memorandum of Reprimand (GOMR) in May 2016; and notified him in July 2016 that he would be involuntarily honorably discharged. He enrolled in and completed the Army Substance Abuse Program (ASAP) in May 2016, through which he received alcohol counseling. He did not consume alcohol for three months from around April to July 2016. (SOR ¶¶ 1.b, 2.a, 3.a; Tr. at 60, 90-96, 103-117, 147-154, 158-161, 168-169, 172-173; GE 1, 2, 4, 5, 6, 8; AE I, J, M, N).

While Applicant’s involuntary discharge was pending, he was charged with his second DUI in October 2016. (SOR ¶¶ 1.c, 2.a, 3.a). He was 24 years old. He had resumed consuming alcohol in July 2016 as self-medication for his depression about his “unknown future and unknown fate.” His tipping point occurred in September 2016 when his roommate moved out. He found himself socializing with “bar buddies” who he did not really know and he did not communicate or seek help from his family or friends. On a holiday weekend, he consumed alcohol at a Halloween party. He then drove to a bar where he continued to consume alcohol. On his drive home, he was going too fast upon arriving at an intersection, tried to turn his car sideways, hit a curb, and flipped his car into a ditch. His BAC was .23%. The DUI was dismissed. He was discharged from the U.S Army honorably, due to unacceptable conduct. (SOR ¶ 3.b; Tr. at 90-96, 108, 117-125, 132-133, 154-161, 168-169, 172-174; GE 1, 3, 4, 5, 6, 8; AE F, I, M, N).

Applicant confided in his parents and wife after his second DUI. During his two- to three-week out processing from the U.S. Army, he received alcohol counseling and treatment from the same ASAP counselor as his first DUI. The counselor diagnosed him

with alcohol-related disorder, moderate and recommended that he attend Alcoholics Anonymous (AA) and abstain from alcohol. His father took him to his first AA meeting and he attended AA daily for two to three weeks. He testified that he accepted that he is an alcoholic at his first AA meeting. He then returned to live with his parents and continued to attend AA meetings weekly to twice weekly from approximately March 2017 until April 2018, when he relocated. He attended one to two AA meetings in June 2018. Since his October 2016 DUI, he consumed alcohol on three occasions when he was with close friends and family: he had three beers at his wedding in December 2016, and four to five beers on two occasions in January 2017. (Tr. at 50, 60, 62-66, 121, 125-144, 161-164, 172-178; GE 1; AE A, I).

Applicant has not consumed alcohol since January 2017. He intends to remain sober. He testified that although he intends to resume with AA meetings, he does not rely on AA to maintain his sobriety. He has instead focused on his family, job, education, exercise, home, church, and friendships that are not centered around alcohol. In June 2018, he sought an alcohol evaluation and his previous diagnosis was updated to alcohol-use disorder, moderate in sustained remission. He was recommended to continue with AA and remain sober. He does not have any other alcohol-related incidents. He testified that he identified that the root cause of his problems was alcohol, so he completely removed it from his life. He testified:

I don't regret what happened, because my life has completely turned around from it. I think if I didn't have the second DUI, I would really, truly [not] realized I had a problem until something worse might have happened.

(Tr. at 50, 60, 62-66, 121, 125-144, 161-164, 175-178; AE B, C, I).

Applicant disclosed to his previous and current managers his first DUI and his consequent military discharge. He testified that he would disclose his second DUI, but had not done so because he was not so required, since it was not a conviction. He received a performance evaluation rating of "successful" from his employer in 2017 and an "excellent" rating in 2018. (Tr. at 96-100, 170-171; AE E, G, I, L).

Applicant's wife testified. She met and began dating Applicant in 2014 and was aware of his alcohol-related incidents and involuntary discharge from the U.S. Army. She reiterated that he has not consumed alcohol since January 2017. She does not consume alcohol. She testified that though they have found themselves in social situations where alcohol is present, to include through their intramural kickball league, she has no concerns about his ability to maintain sobriety. She described him as a matured, responsible, determined, self-motivated individual "focused on his health and his career and family" who has "turned his life around." She testified that Applicant has "realized that alcohol serves no purpose in his life." (Tr. at 45-66; AE H).

One of Applicant's West Point classmates, who was also a roommate on various occasions, testified. The witness was serving in the U.S. military on active duty as of the date of the hearing. He was aware of the SOR allegations. He testified that while

attending West Point, he, Applicant, and their peers drank fairly often on the weekends. Though he did not consider Applicant to have an alcohol problem, he was “disappointed” but “not completely blindsided” when he learned of Applicant’s DUIs. Since graduation, they communicate approximately once monthly and see each other occasionally. The witness testified that Applicant informed him about Applicant’s sobriety. The witness also observed Applicant practice sobriety on around four occasions and stated that he has no concerns with Applicant’s ability to maintain his sobriety. He described Applicant as “very intelligent” and one who has “always done very well at everything he set his mind to.” (Tr.at 33-44; AE G).

Applicant’s colleague and mentor since 2017 testified. She previously interacted with him daily, but since his relocation in April 2018 they interacted twice weekly. She testified that she was aware of his alcohol-related incidents and involuntary military discharge. She testified that he “has always been one of the highest performing junior engineers” who “performs above his level.” As such, she has given his managers “extremely positive” peer feedback for his performance evaluations. She testified that she had been in social situations with Applicant and never observed him consuming alcohol. She was aware that he was sober. She considers him to be an honest and trustworthy individual. Numerous professional and social character references describe Applicant as a man of exemplary character, with demonstrated integrity and trustworthiness. (Tr. at 66-84; AE G).

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines 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(a), 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 Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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.

Section 7 of Exec. Or. 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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 conditions that could raise security concerns under AG ¶ 22. The disqualifying conditions potentially applicable in this case include:

(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 pattern of excessive alcohol consumption and alcohol-related incidents. He was involuntarily discharged from the U.S. Army as a result of his first DUI. AG ¶¶ 22(a) and 22(c) are applicable.

AG ¶ 23 provides the following conditions that could mitigate security concerns:

(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; and

(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.

Applicant's DUIs and involuntary military discharge were his wake-up call that he is an alcoholic. He has since turned his life around. He attended AA meetings from approximately October 2017 to June 2018 and intends to resume doing so. He received alcohol counseling in October 2017 and an alcohol evaluation in June 2018 wherein he was diagnosed with alcohol-use disorder, moderate in sustained remission. He has established a support network in his family, job, education, exercise, home, church, and friendships. He has been sober since January 2017. He understands that alcohol is the root of any of his problems and he is committed to a life of sobriety. I find that AG ¶¶ 23(a) and 23(b) are established.

#### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant pled no contest to his 2014 citation for public drunkenness. He was charged with two DUIs in April and October 2016. Though he was not convicted of either DUI, he admitted that he drove under the influence of alcohol. AG ¶ 31(b) is established.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

For the same reasons as set forth above in my Guideline G analysis, AG ¶¶ 32(a) and 32(d) apply.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

The guideline notes conditions that could raise security concerns under AG ¶ 16. The disqualifying conditions potentially applicable in this case include:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

Applicant's pattern of excessive alcohol consumption and alcohol-related incidents, and his involuntary military discharge reflect questionable judgment and unreliability. This information is known among his family. He has also disclosed it to certain friends and colleagues. He disclosed his first DUI and his consequent military



discharge to his former and current managers. I find that AG ¶ 16(c) applies but 16(e) does not.

AG ¶ 17 provides the following conditions that could mitigate security concerns:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

For the same reasons as set forth above in my Guideline G and J analyses, I find that AG ¶¶ 17(c) and 17(d) 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 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 Guidelines G, J, and E in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the alcohol consumption, criminal conduct, and personal conduct security concerns.

### **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: Subparagraphs 1.a – 1.c:	FOR APPLICANT For Applicant
Paragraph 2, Guideline J: Subparagraphs 2.a:	FOR APPLICANT For Applicant
Paragraph 3, Guideline E: Subparagraphs 3.a – 3.b:	FOR APPLICANT 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 continued eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge