



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 18-01829
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
 For Applicant: *Pro se*  
 06/18/2019

**Decision**

MARINE, Gina L., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 19, 2015. On February 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and J. The DOD CAF acted under Executive Order (EO) 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 the DOD on June 8, 2017.

Applicant answered the SOR on March 18, 2019, and requested a decision on the record without a hearing. On April 29, 2019, the Government sent a complete copy of its written case, a file of relevant material (FORM) including documents identified as Items 1 through 8, to Applicant. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on May 3, 2019, and did not respond.

Item 1 contains the pleadings in the case. Items 2 through 8 are admitted into evidence. The case was assigned to me on June 17, 2019.

### **Findings of Fact**

Applicant, age 55, has two adult children and one minor child. In December 2017, because of his drinking habits, his wife separated from him after 29 years of marriage. A divorce is pending. He received a high school diploma in 1981. He has been employed as a product line manager since 2005, and has maintained his current DOD security clearance since 1996. He previously held a DOD security clearance during his service in the U.S. Air Force from 1981 through 1990. (Item 2; Item 4 at 7).

Applicant was arrested and charged with driving while impaired by alcohol (DWI) in 1997, 2002, and 2017. He successfully completed alcohol treatment programs in 1996, 2003, and 2018. Each time, his treatment recommendations advised abstention from alcohol. He was diagnosed with an alcohol use disorder during treatment in 2003 and 2018. The record does not establish whether a diagnosis was rendered during his 1996 treatment. (Item 1; Item 2 at 29-30, 33-34; Item 4 at 4, 5, 7, 8 11, 12; Item 5; Item 8).

During his 2015 and 2018 security clearance interviews, Applicant acknowledged his alcoholism and referred to himself as an alcoholic. He recognized that he consumed alcohol to relieve stress and to avoid his problems. He conceded the poor judgment associated with his alcohol consumption. However, in his 2019 SOR answer, while he admitted the “bad decision” that he made driving after drinking, he believed that his 2017 arrest “would not have occurred” had it not been for his wife and daughter pressuring him to conduct a safety test on a vehicle with an expired registration. (Item 1; Item 4 at 5 and 8).

Earlier in the day of his arrest in 2017, Applicant reportedly consumed “almost a pint” of whiskey at his home. After dinner, believing “enough time had passed” and that he was not impaired, he drove his daughter’s car to test whether its power steering issues had resolved before she drove it to college the following day. An officer stopped him for an unspecified reason and then discovered that the vehicle’s registration had been flagged for failing an emissions test. After failing field sobriety tests and registering a blood alcohol content of .11, Applicant was charged with several offenses, including DWI. In February 2018, he pled guilty to DWI for he received probation before judgment, including six months in jail, suspended, and unsupervised probation for three years. (Item 4 at 7; Item 5).

Applicant reported two periods of sobriety prior to his 2017 arrest: approximately one year following his 1997 arrest, and approximately 10 years between 2004 and 2014. He attributed resuming alcohol consumption in about 2014 to the stress associated with ongoing marital issues. He had been in counseling due to his marital problems in the months prior to his 2017 arrest, and had attended an AA meeting just days before. (Item 1; Item 4 at 8, 11 through 13).

Applicant has not consumed alcohol since his 2017 arrest and intends to stay sober. As of April 2018, he had been attending AA meetings three days per week. In March 2019, he affirmed his desire and motivation to stay sober, particularly since he had reportedly suffered a myriad of negative personal and financial consequences after his 2017 arrest. Because he did not address it in his SOR answer or respond to the FORM, the record does not specify his current relapse prevention or stress management plans, including whether he continued his AA attendance after April 2018. (Item 1; Item 4 at 8 and 13).

### **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.” (*Egan* 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.” (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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.” (EO 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. (ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993)). 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. (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; AG ¶ 2(b)).

## **Analysis**

### **Guideline G (Alcohol Consumption)**

The concern under this guideline 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.

Applicant's excessive alcohol consumption, which resulted in three DWIs within the span of 20 years, his relapse after an alcohol use disorder diagnosis in 2003, and his 2017 alcohol use disorder diagnosis establish the following disqualifying conditions under this guideline:

AG ¶ 22(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;

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(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;

AG ¶ 22(e): the failure to follow treatment advice once diagnosed; and

AG ¶ 22(f): alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Because the facts alleged in SOR ¶ 1.f refer to treatment without a diagnosis, they do not independently establish any disqualifying conditions. Accordingly, I must find SOR

¶ 1.f in Applicant's favor. However, the fact that he received alcohol treatment in 1996 with a recommendation to abstain from alcohol remained relevant to the underlying concerns.

Neither of the following applicable mitigating conditions under this guideline are established:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

AG ¶ 23(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.

The security significance of Applicant's 1997 and 2002 DWIs is brought current by his more recent 2017 DWI. Collectively they raise questions about Applicant's good judgment, reliability, and trustworthiness. Applicant's prior acknowledgment and acceptance of responsibility for his problems with alcohol were undercut by him misplacing blame for his 2017 arrest, in his SOR answer, on his wife and daughter and the car registration issue. I have doubts that Applicant has truly acknowledged and accepted his limitations with alcohol. Moreover, given his history, Applicant has not demonstrated a sufficient pattern of modified behavior for me to conclude that his excessive consumption of alcohol and questionable judgment are behind him.

### **Guideline J (Criminal Conduct)**

The concern under this guideline is set out in AG ¶ 30: 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.

Applicant's DWI charges, the most recent of which occurred in 2017 and for which he is currently on probation, establish the following disqualifying conditions under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

AG ¶ 31(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; and

AG ¶ 31(c): individual is currently on parole or probation.

Neither of the following applicable mitigating conditions under this guideline are established:

AG ¶ 32(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

AG ¶ 32(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.

Applicant's DWI history establishes a pattern of criminal misconduct that casts doubt about his judgment, reliability, and trustworthiness, and calls into question his ability or willingness to comply with laws, rules, and regulations. Applicant remains under the court's jurisdiction through at least 2021 in connection with the 2017 DWI. There has not been a passage of time sufficient to conclude that his questionable judgment and criminal misconduct will not recur.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines G and J in my whole-person analysis, and I have considered the factors AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines G and J, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated security concerns raised by the excessive alcohol consumption and criminal misconduct underlying his DWI history and current probation. Accordingly, Applicant has not carried

his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge