



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-02820  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*  
06/23/2020

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Applicant mitigated the Guideline G (Alcohol Consumption) security concerns raised by his past alcohol-related charges and his 2019 alcohol-use evaluation. Access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on October 26, 2017. On November 19, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline G. The DOD acted under Executive Order (E.O.) 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 answered the SOR on January 29, 2020, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 9, 2020. On March 17, 2020, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 6, was sent to Applicant, who was given an opportunity to file objections and submit material to refute,

extenuate, or mitigate the Government's evidence. The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated March 17, 2020, and Applicant's receipt is dated March 24, 2020. The DOHA transmittal letter informed Applicant that he had 30 days after receiving it to submit information. He did not file a response. The case was assigned to me on June 2, 2020.

### **Findings of Fact**

The SOR allegations arise under Guideline G. SOR ¶ 1.a alleges that Applicant was arrested and charged with driving under the influence of alcohol (DUI) in January 2012. He pleaded guilty and was sentenced to one year probation and 120 hours of community service, his license was suspended for one year, and he was required to attend six Alcoholics Anonymous (AA) meetings. Applicant admits this allegation.

SOR ¶ 1.b alleges that Applicant was arrested in March 2014 for disturbing the peace after having consumed alcohol. He pleaded guilty and was fined. He admits this allegation.

SOR ¶ 1.c alleges that Applicant was arrested and charged with DUI, light law violation, and failure to maintain lane in April 2016. He pleaded guilty and was sentenced to 36 hours in jail, one-year probation, and 120 hours of community service. He was required to wear an ankle monitor for three months and his license was suspended for one year. Applicant admits this allegation with the correction that his license was not suspended, but he was required to use an interlock device on his vehicle for one year.

SOR ¶ 1.d alleges that Applicant was cited for public intoxication in November 2018 and that the charge was dropped. He admits this allegation.

SOR ¶ 1.e alleges that Applicant was examined by a licensed psychologist in August 2019 and diagnosed with alcohol use disorder, mild, in early remission. The psychologist stated that Applicant's history of binge drinking episodes and the related consequences make him vulnerable to poor decision making that represents a threat to sensitive information. He admits this allegation. Applicant's admissions are incorporated in my findings of fact.

Applicant, 27, is a geospatial analyst currently working for a defense contractor since 2017. He received his bachelor's degree in 2015. He has resided with his girlfriend since 2018. This is his first application for a security clearance. (GX 3; GX 4.)

Applicant began consuming alcohol as a teenager at parties with his friends in 2009. After joining a fraternity in college in 2011, Applicant began drinking beer on a daily basis at fraternity parties. In January 2012, Applicant attended a fraternity party where he consumed an excessive amount of alcohol. He was pulled over on his way back to his dormitory for driving the wrong way on a divided highway. He was convicted of DUI in April 2012 and sentenced as alleged in SOR ¶ 1.a.

In March 2014, while still in college on spring break in Florida, Applicant consumed numerous beers throughout the day on the beach with his friends. The group had rented a locker to secure their belongings during the day. On the way back to their hotel, Applicant and his friends were stopped by police officers and questioned about a stolen cell phone. The group gave the officers permission to search their belongings and a cell phone that did not belong to anyone in the group was found in Applicant's friend's backpack. The friend denied stealing the cell phone and the rest of the group, including Applicant, became loud and unruly in defending their friend's innocence. The friend was arrested for theft of the cell phone and the rest of the members of the group, including Applicant, were cited for disturbing the peace. The disposition of the charge is as alleged in SOR ¶ 1.b.

In April 2016, Applicant and several friends attended a fraternity party where they consumed alcohol throughout the day. In the afternoon, Applicant left the party and slept for several hours, then awoke to join his friends for a late night dinner. Applicant thought he was capable of legally driving, and drove the group out for dinner. On the way, Applicant was pulled over for a broken tail light. The officer questioned Applicant who admitted to drinking earlier in the day, but stated he believed he was sober. The officer administered a field sobriety test, which Applicant failed. The officer administered a breathalyzer and Applicant's blood alcohol content (BAC) registered as .12, with the legal BAC limit being .08. He was arrested and the disposition of the case is as alleged in SOR ¶ 1.c and corrected by Applicant.

Following the April 2016 DUI arrest and conviction, Applicant underwent an alcohol use psychological evaluation. The evaluation concluded that Applicant did not have an alcohol use disorder and it did not make any treatment recommendations. He has not driven a vehicle after consuming any alcohol since the 2016 DUI. (GX 5.)

In April 2016, Applicant began voluntarily attending weekly AA meetings which he continued until April 2017. He discontinued attending AA meetings because he believed he had matured, was making better decisions about his alcohol consumption, and did not have an alcohol use problem. (GX 4.)

In November 2018, just after his twenty-sixth birthday, Applicant, attended a Thursday night professional football game. Prior to attending the game, Applicant secured a friend to be the designated driver. Applicant consumed numerous beers beginning in the afternoon at the pregame festivities. At some point, Applicant went to the designated driver's vehicle to sleep. At about 3:00 am, he was awoken by the police. Applicant was detained by the police and charged with public intoxication. Later that morning, Applicant called his facility security officer (FSO) to report the charge, and the human resources officer, who is also Applicant's mother, to take paid leave for the day. Applicant retained an attorney, and the charge was ultimately dropped. (GX 5.)

Concerned about this incident, and due in part to his girlfriend's and his mother's concern about his alcohol consumption, Applicant self-assessed his drinking pattern. He determined that it had resulted in conduct that was detrimental to him, and modified his

behavior, which includes no longer partying with his fraternity brothers. Applicant worked to find balance in his life by not involving alcohol in his activities and changing his social group. Applicant states that he has not been intoxicated since 2018. From November/December 2018 until April 2019, he voluntarily practiced abstinence from alcohol. Since then, Applicant rarely drinks. Once or twice a month, he drinks two to three beers, but never more than three. He does not keep alcohol in his home. He states that his “priorities were out of line in college and shortly after, which aided in some bad decisions.” He has since matured and prioritized his life much differently. (GX 4.)

In August 2019, at the behest of the DOD CAF, Applicant underwent a psychological evaluation performed by a clinical psychologist to assess potential security concerns regarding Applicant’s alcohol use. The evaluator reviewed Applicant’s 2016 evaluation, his 2017 e-QIP, and his personal subject interview with the background investigator, and contacted Applicant’s two work supervisors. The evaluator interviewed Applicant and administered several psychological tests. The most relevant test that the evaluator administered was the Alcohol Use Disorders Identification Test (AUDIT) which “examines problematic alcohol use.” The results of this test indicated that Applicant was low risk. (GX 5.)

In discussing Applicant’s six-month period of abstinence followed by his ongoing practice of modified consumption, the evaluator stated that Applicant had not demonstrated a clear and established pattern of modified alcohol consumption. He goes on to state that “typically, one year of sustainable substance-use change is a beginning toward sustainable change.” He noted that Applicant’s six months of sobriety was promising but “he has resumed a limited alcohol use that is likely to increase given past behavior.” The evaluator specifically cited Applicant’s reported past binge-drinking episodes and alcohol-related incidents as a basis for concern about Applicant’s potential vulnerability from poor decision making. The evaluator observed that “legal consequences seem to occur after binge drinking episodes with his friends when his judgment is impaired . . . [and Applicant’s] substance use appears to be significantly influenced by his peers.” (GX 5.)

The evaluator concluded that the frequency of Applicant’s past “binge drinking episodes leaves him vulnerable to poor decisions and additional consequences in his personal and professional life.” The evaluator further stated that Applicant’s “decision-making, while under the influence of alcohol, represents a threat to sensitive information.” He concluded that Applicant’s past alcohol use raises concerns about future consumption. He recommended that Applicant “receive psychotherapy and/or reengage in self-help services (e.g. Alcoholics Anonymous) . . . [and that he] should seriously consider long-term sobriety from alcohol as a treatment goal.” However, the evaluator did not conclude that abstinence was mandatory for Applicant. (GX 5.)

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to

“control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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. See *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 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. See 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 ¶ 2(b).

## **Analysis**

### **Guideline G, Alcohol Consumption**

The concern under this guideline is set out in AG ¶ 21:

The Concern. 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 following disqualifying conditions apply:

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; and

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.

The following mitigating conditions are applicable:

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.

Applicant began drinking alcohol while in high school in 2009. After joining a fraternity in 2011, Applicant began consuming alcohol on a daily basis. While partying

with his fraternity brothers, he was arrested for DUI in 2012 and again in 2016 and charged with disorderly conduct in 2014. Following his 2016 arrest, Applicant underwent an alcohol-use evaluation. The evaluator determined that Applicant did not have an alcohol-use disorder and made no treatment recommendations. Applicant has not driven after consuming alcohol since this arrest.

Applicant's most recent alcohol-related incident occurred in November 2018 when he had just turned 26. In anticipation of a partying atmosphere at a professional football game that would include drinking beer, he arranged to ride with a designated driver. Despite this effort to be more responsible, his over-consumption of alcohol resulted in an alcohol-related charge. Applicant's conduct following this incident reflects his realization that his pattern of drinking was having an overall negative impact on his life. He immediately contacted his FSO to report the incident. He then instituted changes in his alcohol consumption and his relationship with alcohol. He changed the pattern of his social life and he no longer keeps alcohol in his home. Applicant has demonstrated his maturity through his recognition that his alcohol-related antics, usually involving his fraternity brothers, are not acceptable conduct.

Applicant has not had any alcohol-related incidents since 2018. He has successfully practiced modified consumption of alcohol for 18 months. The Directive does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. The Judge is required to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct.

Applicant acknowledges the negative impact his past pattern of alcohol consumption had on his decision making. He voluntarily practiced abstinence for a period of six months, then responsibly resumed alcohol consumption at a moderate rate. He has successfully established a pattern of moderate consumption for over one year. He has not had any alcohol-related incidents at or away from work since 2018, and he has changed his social life. While the 2019 evaluator recommended that Applicant work towards abstaining from alcohol, he also determined that, under Applicant's ongoing modified consumption practice, his mild alcohol use disorder is in remission. AG ¶¶ 23(a) and 23(b) apply.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a).

I have considered the factors in AG ¶ 2(a) and incorporated my comments under Guideline G in my whole-person analysis. After weighing the disqualifying and mitigating

conditions under Guideline G, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his past alcohol use. Accordingly, I conclude he has 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption):      FOR APPLICANT

Subparagraphs 1.a – 1.e:      For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge