



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



In the matter of: )  
)  
) ISCR Case No. 19-03196  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: Jacob T. Ranish, Esq.

12/10/2020

**Decision**

HARVEY, Mark, Administrative Judge:

From 2019 to April 20, 2020, Applicant consumed alcohol responsibly, and on April 21, 2020, he ended his alcohol consumption. Applicant did not have any alcohol-related incidents with the police, the courts, or at work. He completed an alcohol assessment and therapy program in 2020. He attended numerous Alcoholics Anonymous (AA) meetings. Applicant mitigated Guideline G (alcohol consumption) security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 1, 2017, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On February 6, 2020, the Department of Defense (DOD) Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline G. (HE 2) On March 31, 2020, Applicant responded to the SOR and requested a hearing. (HE 3)

On September 17, 2020, the case was assigned to me. On October 9, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 2, 2020. The hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; Applicant offered five exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 8-9, 40; GE 1-6; AE A-E) On November 13, 2020, DOHA received a transcript of the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at <https://ogc.osd.mil/doha/isp.html>.

### **Findings of Fact**

In Applicant's SOR response, he denied the SOR allegation in ¶ 1.a, and he admitted in part and denied in part the allegation in SOR ¶ 1.b. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 28-year-old embedded electrical and software engineer who has worked for a defense contractor since April 2016. (Tr. 7, 9, 59; GE 1, 5) In 2010, he graduated from high school, and in 2015, he graduated from college Summa Cum Laude with a 4.0 grade point average and received a bachelor's degree in electrical engineering. (Tr. 60; GE 1; GE 5) In December 2020, he expects to receive a master's degree in electrical and computer engineering from an elite university. (Tr. 59) He has not served in the military. (GE 1) Applicant married in 2015, and his children are ages three, two, and seven months. (Tr. 61, 70)

### **Alcohol Consumption**

SOR ¶ 1.a alleges that Applicant frequently and habitually consumed alcohol in excess and to the point of intoxication from about December 2007 to at least January 2019.

SOR ¶ 1.b alleges that a licensed psychologist "diagnosed [Applicant] with alcohol abuse, uncomplicated (rule out alcohol dependence) and opined that [his] prognosis from alcohol abuse is only fair, given that [his] motivation to reduce [his] use to a healthier level is low." The psychologist acknowledged that Applicant had not had any legal trouble from alcohol consumption; however, his "regular periods of intoxication could negatively impact [his] judgment, reliability, and trustworthiness in the context of safeguarding sensitive information and working in a cleared environment."

On November 27, 2017, an Office of Personnel Investigations (OPM) investigator interviewed Applicant. (GE 2) In 2011, Applicant drank two bottles of beer, and then he drove. (*Id.* at 9) He drank to the point of intoxication once or twice a week from December 2014 to November 2017. (*Id.* at 8) He told the OPM investigator that he was essentially drunk for the year of 2014. (*Id.*) Occasionally he drank to intoxication three times in a week, and once he drank to intoxication on five consecutive nights. (*Id.* at 8-9) He consumed alcohol because of stress and anxiety. (*Id.*) Much of his stress was related to becoming engaged to be married, and his family life in the first two or three years of his marriage. (*Id.*)

The SOR does not allege sexual behavior or criminal conduct security concerns. Applicant's counsel objected to consideration of Applicant's sexual behavior while under the influence of alcohol. I overruled the objection, and will only consider the evidence for the limited purpose of mitigation in connection with alcohol-related judgment issues. In 2013 when he was 21 years old, Applicant engaged in sexual intercourse on one occasion with his 17-year-old cousin and on another occasion with his cousin's 17-year old friend. (Tr. 72-73; GE 2 at 9-10; GE 5 at 4, 6) The sexual contact with each of them was consensual. (Tr. 72-73)

Under the state law where the conduct occurred, a person who engages in intercourse or a sexual act with a child age 14 or 15 when the defendant is over the age of 21, or who engages in sexual contact (genital touching short of penetration) with a child under the age of 14 when the defendant is at least four years older than the child commits a crime. Accordingly, Applicant's sexual acts with the 17-year-old girls were not criminal offenses. Applicant's cousin's friend sent Applicant partially nude photographs of herself on Snapchat (showing her breasts and buttocks), and he retained them on his phone for a time, and then he deleted them. (Tr. 73; GE 2 at 9; GE 4) He did not state he was intoxicated at the time he possessed the sexual images of a child (person under 18 years of age). Possession of sexual images of a child on a cell phone violates federal law and is serious criminal conduct. See Department of Justice website, Citizen's Guide To U.S. Federal Law On Child Pornography, available at <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-pornography>; See also Geoffrey Nathan, Child Pornography + Laws, Charges & Statute of Limitations, <https://www.federalcharges.com/child-pornography-laws-charges/>.

A licensed psychologist, who is a consultant for the DOD CAF (CAF psychologist), interviewed Applicant on January 14, 2019. (Tr. 16-20; GE 5 at 1) A licensed clinical social worker participated in Applicant's interview with the CAF psychologist. (Tr. 22-23) Applicant consumed alcohol in high school and college at times to excess. (Tr. 62-63, GE 5 at 2) The only time he drove with alcohol in his system occurred when he was in high school. At that time, he drank two drinks and then drove to a restaurant. (Tr. 70-71) He was worried that the police would arrest him for underage alcohol consumption, but he was not arrested. (Tr. 70-71) Applicant's alcohol consumption in college was limited. (Tr. 62-63) His alcohol use increased in 2014. (GE 5 at 2) Applicant told the CAF psychologist, "I spent most of [2014] drunk." (*Id.*) Applicant said this comment to the CAF psychologist was an exaggeration because he never consumed alcohol during the day. (Tr. 74-75) He consumed eight or more drinks while playing video games at night. (GE 5 at 2) He

requires about eight drinks to become intoxicated. (Tr. 31) When he had to work the next day, he limited his alcohol consumption to four or five drinks. (GE 5 at 2) After he married in 2015, he reduced his level of alcohol consumption. (*Id.*) In January 2019, when the CAF psychologist evaluated him, his level of alcohol consumption for a typical week was about 18 to 24 standard drinks of about 1.5 ounces per drink of whiskey. (Tr. 75; GE 5 at 2) He drank more on weekends and less during the week. (Tr. 75; GE 5 at 2) He described himself to the CAF psychologist as a “highly functioning alcoholic.” (*Id.*) He enjoyed alcohol consumption, but believed he could stop drinking if he had a good reason to do so. (*Id.*) His alcohol consumption did not adversely affect his marriage or employment. (*Id.*)

“The National Institute of Alcohol Abuse and Alcoholism defines normal drinking for men as four or fewer drinks per day and 14 or fewer drinks per week. Consuming more alcohol than this categorizes a person as an at-risk drinker.” (*Id.* at 6) According to the CAF psychologist’s January 2019 report, Applicant’s “prognosis for recovery from alcohol abuse is only fair particularly given his motivation to reduce his use to a healthier level is low.” (*Id.*) Because of his alcohol use, particularly his periods of intoxication, his alcohol consumption “could negatively impact his judgment, reliability and trustworthiness in the context of safeguarding sensitive information and working in a cleared settling.” (*Id.* at 7)

The CAF psychologist diagnosed Applicant in January 2019, as “Alcohol abuse, uncomplicated (Rule out Alcohol Dependence),” which he based on International Classification of Disease (ICD) code F10.10. The World Health Organization uses ICD F10.10 for diagnosing alcohol use. (Tr. 32; GE 5) ICD F10.10 does not have diagnostic criteria but is loosely associated with the Diagnostic and Statistical Manual (DSM) 4, published by the American Psychiatric Association, which includes the term “Alcohol Dependence.” (Tr. 32-33, 47) DSM 5 was issued in 2013, and the term Alcohol Dependence was changed to Alcohol Use Disorder. (Tr. 33) ICD 11 is expected to be released in 2021, and it may incorporate the term alcohol use disorder from DSM 5. (Tr. 33) The CAF psychologist did not limit himself to the diagnostic criteria in DSM 5, and instead, he used his own background and experience to make his diagnostic assessment of Applicant’s alcohol consumption. (Tr. 33-36, 38) He believed Applicant was an open, candid person. (Tr. 39) If Applicant received alcohol-related therapy, and he stopped drinking alcohol for six months, the CAF psychologist would conclude that Applicant was not a risk to security. (Tr. 38-39)

In 2020, a forensic, clinical psychologist evaluated Applicant (Applicant’s psychologist). (Tr. 42) He concluded Applicant’s alcohol use was at a normal level at its highest point “and not worthy of any kind of concern or diagnosis.” (Tr. 46, 57) At its height, Applicant drank about a fifth to a fifth and a half “over the course of a week with pretty much daily drinking in the evening starting at 6 o’clock.” (Tr. 52) Applicant never drove a car after drinking (except the one occasion when he was in high school). (Tr. 52) Applicant had increased tolerance due to his regular alcohol consumption, and therefore his judgment was not as significantly affected by his alcohol consumption as it would have been without the increased tolerance for alcohol. (AE A at 7) Applicant did not suffer withdrawal from ending his alcohol consumption. (Tr. 55-56) He noted Applicant is “now completely sober and participating” in AA meetings. (Tr. 46) He has sustained sobriety

and his prognosis is excellent. (Tr. 46-47) The DSM 5 was issued to reduce subjectivity in diagnosis. (Tr. 48)

Applicant's psychologist believed the CAF psychologist's evaluation was incorrect because it did not rely on DSM 5 criteria, and Applicant's alcohol consumption did not have a negative impact on his marriage, social life, and employment, and there were no arrests. (Tr. 49-50) Applicant's attendance at AA, does not mean Applicant is an "alcoholic" or suffers from alcohol abuse disorder. (Tr. 50) AA defines "an alcoholic" as "anyone for whom alcohol has been a problem. So it's a subjective, self-identification. . . . And everybody who attends AA calls themselves an alcoholic." (Tr. 50-51) The "alcoholic" term in AA has no medical standing. (Tr. 51) Applicant's psychologist concluded, "to a great degree of psychological certainty, [he] found [Applicant] to suffer from no psychological or other mental health limitation that would adversely affect his ability to hold a security clearance." (AE A at 8)

A licensed clinical social worker (LCSW), licensed substance abuse professional (SAP), and certified substance abuse counselor (CSAC), provided an assessment and alcohol-related counseling to Applicant at six sessions beginning in April 2020. (AE C; AE D) The LCSW described Applicant as "candid and forthright" and indicated that he "exhibited excellent insight into his situation, expressed sincere remorse, and has actively engaged in rectifying his past behavior." (AE C at 2) Applicant continued his AA attendance via Zoom meetings in 2020. (*Id.* at 3) Applicant "did not experience cravings, tolerance, withdrawals, blackouts or hangovers." (*Id.* at 4) Applicant "passed one of the critical thresholds of sobriety, namely the first six months." (*Id.*) This six-month time period is important because withdrawal symptoms are more intense. (*Id.*) Based on DSM 5, the LCSW diagnosed Applicant with "No Use Disorder" and she recommended no treatment. (*Id.*) She recommended approval of his access to classified information. (*Id.* at 5)

Over the last several years, Applicant decreased his alcohol consumption as his family responsibilities increased. (Tr. 63) In July 2017, when his spouse was expecting their first child, he planned to end his alcohol consumption. (Tr. 79) However, he did not end his alcohol consumption until April 21, 2020, even though he was attending AA meetings in 2018 and 2019. (Tr. 63, 79) Applicant's alcohol use did not cause any problems with the police, courts, or his employment (aside from the security clearance issue). (Tr. 64) From April to June 2020, he attended alcohol-related counseling, and his counseling reinforced his decision not to consume alcohol. (Tr. 69) Applicant is happy with his decision to end his alcohol consumption. (Tr. 65) In 2020, he lost 45 pounds and is now down to 185 pounds. (Tr. 65) His high-blood pressure has decreased to normal. (Tr. 76) Applicant has more energy, and his circle of friends has increased. (Tr. 66) He believed that ending his alcohol consumption would be better for his career and alleviate security concerns. (Tr. 66). He has attended AA since 2018, and he increased his attendance at AA meetings to at least once a week in December 2019. (Tr. 67, 78-79). When he attended AA meetings, he limited his alcohol consumption to about "a half a pint or so." (Tr. 79) Applicant believes that he profits from AA attendance. (Tr. 67) He has committed himself to not drinking alcohol in the future. (Tr. 68) His support groups are his family, AA, and his church. (Tr. 68) He brought his AA sobriety chips to his hearing. (Tr. 80) Applicant concluded his hearing statement indicating:

I think I've been very truthful through this whole entire process. And when I say I have no intentions to ever drink again, I mean it absolutely. It's not worth it to me. If it's going to risk my career and being able to provide for my family in any way, then I'm done with it. And I think I've thoroughly enjoyed the past seven months of being completely sober and abstaining that I have every intent to stay that way. (Tr. 81)

## **Character Evidence**

Three friends who attend the same church with Applicant as well as his spouse provided character statements supporting reinstatement of Applicant's access to classified information. (AE F) The general sense of their statements is that Applicant is diligent, knowledgeable, intelligent, honest, and dependable. (*Id.*) His wife said he reduced his alcohol consumption in 2018, and completely ended his alcohol consumption on April 21, 2020. (*Id.*) The termination of his alcohol use improved his health, energy level, and demeanor. (*Id.*) Applicant has received a bonus and achievement award from his employer. (Tr. 60)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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.

Eligibility for a security clearance 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, these guidelines are applied 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, 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 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 "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, nothing in this decision should be construed to suggest that it is based, in whole or

in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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 Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant's security eligibility. Direct or objective evidence of nexus is not required." ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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

### Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "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."

AG ¶ 22 lists conditions that could raise a security concern and may be disqualifying in this case including:

(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

(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(c) and 22(d) apply. Applicant admitted that he drank to intoxication on multiple occasions. The CAF psychologist diagnosed him with "Alcohol abuse, uncomplicated (Rule out Alcohol Dependence)," which is akin to an "alcohol abuse

disorder” in AG ¶ 22(d). “Binge drinking is the most common pattern of excessive alcohol use in the United States.” See the Center for Disease Control website, (stating “The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person’s blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours.”), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>. There are other definitions of “binge alcohol consumption” that involve different alcohol-consumption amounts and patterns. He engaged in binge-alcohol consumption to the extent of impaired judgment.

The Diagnostic Criteria in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM 5) at 490 states:

A. A problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:

1. Alcohol is often taken in larger amounts or over a longer period than was intended.
2. There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
3. A great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects.
4. Craving, or a strong desire or urge to use alcohol.
5. Recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol.
7. Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
8. Recurrent alcohol use in situations in which it is physically hazardous.
9. Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol.
10. Tolerance, as defined by either of the following:
  - a. A need for markedly increased amounts of alcohol to achieve intoxication or desired effect.
  - b. A markedly diminished effect with continued use of the same amount of alcohol.
11. Withdrawal, as manifested by either of the following:
  - a. The characteristic withdrawal syndrome for alcohol (refer to Criteria A and B of the criteria set for alcohol withdrawal, pp. 499-500).
  - b. Alcohol (or a closely related substance, such as a benzodiazepine) is taken to relieve or avoid withdrawal symptoms.

Specify if: In early remission: After full criteria for alcohol use disorder were previously met, none of the criteria for alcohol use disorder have been met



for at least 3 months but for less than 12 months (with the exception that Criterion A4, "Craving, or a strong desire or urge to use alcohol," may be met). In sustained remission: After full criteria for alcohol use disorder were previously met, none of the criteria for alcohol use disorder have been met at any time during a period of 12 months or longer (with the exception that Criterion A4, "Craving, or a strong desire or urge to use alcohol," may be met).

Specify if: In a controlled environment: This additional specifier is used if the individual is in an environment where access to alcohol is restricted.

Specify if: 305.00 (F10.10) Mild: Presence of 2-3 symptoms

303.90 (F10.20) Moderate: Presence of 4-5 symptoms

303.90 (F10.20) Severe: Presence of 6 or more symptoms

The CAF psychologist did not employ DSM 5 criteria. Nevertheless, the DOD CAF psychologist's opinion is important because AG ¶ 22(d) is not explicitly restricted to DSM 5 criteria. Applicant's psychologist and LCSW concluded Applicant did not meet the criteria for alcohol abuse disorder; however, those evaluations were based on evaluations in 2020 after Applicant had stopped consuming alcohol.

In July 2017, when Applicant's spouse was expecting their first child, Applicant said he planned to end his alcohol consumption. His consumption of alcohol for a longer period than intended satisfied DSM 5 criteria symptom one. His increased tolerance of alcohol satisfies DSM 5 criteria symptom 10b. There is sufficient evidence to meet the DSM 5's standard for Alcohol Abuse Disorder 305.00 (F10.10) Mild in 2017 because he had two symptoms in a 12-month period. The CAF psychologist, Applicant's psychologist, and Applicant's LCSW all agreed that six months of abstinence after alcohol-related therapy would indicate "alcohol abuse" under DSM 5 was not an appropriate diagnosis.

AG ¶ 23 details conditions that could mitigate security concerns including:

(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.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. Incidents of driving under the influence of alcohol are particularly problematic because they show a serious lack of judgment and risk injury or death to the applicant and the public. In this case, there were no alcohol-related driving incidents. Nevertheless, a person who drinks to intoxication, and scrupulously avoids driving afterwards may exercise questionable judgment or fail to control impulses in other areas such as in a security context. See AG ¶ 21.

The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption or responsible alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). See *also* ISCR Case No. 08-04232 (App. Bd. Oct. 9, 2009) (affirming denial of security clearance for Applicant with alcohol-related criminal offenses for six years prior to hearing). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007) the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (reversing grant of a security clearance where most recent alcohol-related incident was three years before hearing because of overall history of alcohol consumption).

In ISCR Case No. 18-02526 (App. Bd. Dec. 20, 2019) the applicant "drove vehicles on three occasions while impaired by alcohol between 2000 and 2017." *Id.* at 4. The applicant participated in alcohol-related therapy and counseling, and he abstained from alcohol consumption for two years. *Id.* at 2. The Appeal Board emphasized the lack of an established benchmark period of abstinence from alcohol consumption stating:

As we have previously stated, the Directive does not specify how much time must pass to mitigate the various types of misconduct identified in the adjudicative guidelines. Contrary to the Judge's conclusion, the Board has repeatedly declined to establish a "benchmark" or "bright-line" rule for evaluating the recency of misconduct. The extent to which security

concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole.

*Id.* at 3 (citing ISCR Case No. 18-01926 at 4 (App. Bd. Sept. 20, 2019) (reversing grant of security clearance for applicant with three alcohol-related driving incidents with most recent occurring in 2017)).

In this case, two psychologists, a LCSW, and DSM 5 cited the importance of therapy plus at least six months of abstinence to the alcohol-rehabilitation process. For security purposes there is no bright-line abstinence test that automatically mitigates security concerns under Guideline G.

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption and Applicant's history of alcohol consumption. Applicant significantly reduced his alcohol consumption in 2019, and completely stopped his alcohol consumption on April 21, 2020. His alcohol consumption "does not cast doubt on [his] current reliability, trustworthiness, or judgment." AG ¶ 22(a) partially applies.

There is evidence of four non-SOR allegations: (1) Applicant drove after drinking two beers or drinks in high school (underage alcohol consumption-possible driving while impaired by alcohol); (2)-(3) Applicant engaged in sexual intercourse with two 17-year-old girls in 2013; and (4) Applicant possessed child pornography (pictures of one of the 17-year-old girl's breasts and buttocks) in 2013. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegations will not be considered except for the five purposes listed above.

The *sine qua non* component of alcohol-related security concerns is alcohol's impact on judgment as reflected in AG ¶ 21 and AG ¶ 23(a). These four instances of poor judgment Applicant showed when he was impaired or intoxicated by excessive alcohol consumption or when his overall judgment was affected by multiple alcohol binging instances are relevant in the mitigation analysis. However, the most recent incident of such poor judgment was seven years ago, and Applicant has changed his patterns of alcohol consumption.

Applicant admitted that his excessive alcohol consumption had adverse effects on his health and employment (because his access to classified information has not been granted). He provided evidence of his actions to reduce his alcohol consumption from 2019 to April 20, 2020, and to abstain from alcohol consumption after April 21, 2020. AG ¶ 22(b) applies.

Applicant received some alcohol-related therapy from the LCSW and attended numerous AA meetings. He has AA chips showing his satisfactory progress in sobriety. He “has no previous history of treatment and relapse.” AG ¶ 22(c) applies.

AG ¶ 23(d) applies. Applicant completed the alcohol-related therapy or counseling the LCSW provided. There was no recommended aftercare. Applicant’s reduced alcohol consumption from 2019 to April 21, 2020, shows “a clear and established pattern of modified consumption.” The absence of any alcohol consumption after April 21, 2020, adds to the mitigating effect of AG ¶ 23(d).

Enough time has elapsed since 2019 to enable a reasonable predictive judgment that his maladaptive use of alcohol is safely in the past. He intends to continue to refrain from alcohol consumption. He receives support in his continued abstinence from AA, his church, and his family. Alcohol consumption security concerns are mitigated.

### **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 the 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline G are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 28-year-old embedded electrical and software engineer who has worked for a defense contractor since April 2016. In 2015, he graduated from college Summa Cum Laude with a 4.0 grade point average, and he received a bachelor’s degree

in electrical engineering. At his hearing he said that in December 2020, he expects to receive a master's degree in electrical and computer engineering from an elite university.

Three friends who attend the same church with Applicant as well as his spouse provided character statements supporting reinstatement of Applicant's access to classified information. The general sense of their statements is that Applicant is diligent, knowledgeable, intelligent, honest, and dependable. The termination of his alcohol use improved his health, energy level, and demeanor. Applicant has received a bonus and achievement award from his employer.

Applicant's excessive alcohol consumption especially in 2013 and 2014 raised serious security concerns. In 2013, he showed extremely poor judgment when he engaged in consensual sexual relations on two occasions with 17-year-old girls while he was under the influence of alcohol, and he possessed child pornography (semi-nude pictures of one of the girls). In 2014, he frequently became intoxicated in the evenings. In 2019, he reduced his alcohol consumption; however, in January 2019, he was consuming 24 drinks a week, and occasionally becoming intoxicated. Twenty-four drinks a week and occasional intoxication is excessive alcohol consumption for security purposes. In 2019, he and his spouse had their second child, and he reduced his alcohol consumption to responsible levels. On April 21, 2020, he ended his alcohol consumption. He received alcohol-related therapy, and he completed the alcohol-counseling program. He frequently attended AA meetings and earned sobriety chips. He intends to continue to maintain sobriety.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)). I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated alcohol consumption 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:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	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 or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge