



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 20-02102
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
 For Applicant: *Pro se*
10/15/2021

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted his security clearance application (SCA) on September 3, 2019. On February 10, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline G. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 February 23, 2021, and requested a decision based on the written record in lieu of a hearing. On April 7, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 9. 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 April 28, 2021, and did not respond to the FORM or object to the Government’s

evidence. The case was assigned to me on July 23, 2021. Items 1 and 2 contain the pleadings in the case. Items 3 through 9 are admitted into evidence. I *sua sponte* appended to the record Administrative Exhibits (AX) I through III.

Administrative Notice

The record contained incomplete references to certain criminal charges by either citing only a statutory number or a short-form name. To ensure that the record accurately reflected those charges, I *sua sponte* took administrative notice of the relevant facts contained in the applicable statutes and appended them to the record as AX I through AX III.

Findings of Fact

Applicant, age 32, has never married nor had children. He received a high school diploma in 2007 and a bachelor's degree in 2015. He has been employed as a quality lead by a defense contractor since January 2018. Another defense contractor offered him a position as an avionics technician in August 2019, conditioned on him being granted a security clearance. Applicant previously held a security clearance while serving on active duty with the U.S. Marine Corps from 2012 through 2016. (Item 3; Item 4 at 3)

Under Guideline G, the SOR alleged facts related to five criminal charges involving Applicant's excessive alcohol consumption between 2009 and 2017 including: two driving under the influence (DUI) charges (SOR ¶¶ 1.a and 1.e), two driving while intoxicated (DWI) charges (SOR ¶¶ 1.b and 1.d), and one public intoxication charge (SOR ¶ 1.g). It also alleged facts concerning Applicant's 2014 alcohol abuse treatment (SOR ¶ 1.c), his 2016 service discharge for alcohol rehabilitation failure (SOR ¶ 1.f), and his continued consumption of alcohol through at least November 2019 (SOR ¶ 1.h). In his SOR answer, Applicant admitted each of the SOR allegations, without explanation. (Items 1, 2)

In March 2009, when he was a college student, Applicant parked his vehicle behind a closed business with two friends as passengers. After deeming the vehicle suspicious given the location in which it was parked at a late hour, a police officer pointed a spot light on the vehicle to find heavy smoke coming out of the driver's side window. As he approached the vehicle (in which its engine was still running), the officer detected a heavy smell of burnt marijuana emitting from the vehicle. During a pat down, the officer smelled a heavy odor of alcohol and burnt marijuana on Applicant's person. During a search of the vehicle, the officer found two red plastic cups under the driver's seat that contained beer. Applicant was arrested and charged with operating a vehicle under the influence of alcohol or drugs (OVI). While being processed at the police station, Applicant gave an invalid breath sample (claiming that his asthma prevented him from providing a valid sample) and refused to give a urine sample (on the basis that the officer already knew "what is in there"). In July 2009, Applicant pled guilty to a lesser charge of having physical control of a vehicle while under the influence for which he was fined \$200. His father paid the fine. (Item 4 at 12-13; Item 5; Item 9; AX I, II)

There is no evidence in the record that Applicant was charged with any drug-related offense in connection with the 2009 incident. When questioned about the incident during his March 2012 security clearance interview (SCI), Applicant maintained that he was arrested because the officer observed beer in his vehicle, he had been consuming beer, and he was in the driver's seat of the parked vehicle. He estimated that he drank about two to three beers while parked. He did not mention marijuana with regard to the incident, but admitted that his only marijuana use occurred on the day of his high school senior prom in April 2007. On that day, he tried marijuana twice; both times by smoking a marijuana cigarette (about two puffs each time). He did not use marijuana again because it made him sick to his stomach and, at that time, he was concerned that marijuana use would threaten his career in the fire safety program in college. During his 2012 SCI, Applicant declared his intent not to use marijuana in the future because he did not want it to affect his career in the Marine Corps. (Item 4 at 12-13)

In May 2014, while on active duty, Applicant consumed purportedly six to seven alcohol beverages with friends, while at an unknown person's home. During his drive home, a police officer pulled Applicant over for erratic driving. After failing both field sobriety and breathalyzer tests, he was arrested and charged with DWI. He was also charged with speeding, which was later dismissed. He spent one night in jail. In December 2014, he pled guilty to DWI for which he was fined and sentenced to 60 hours of community service and two years of unsupervised probation. Additionally, his driver's license was revoked for 30 days. He paid \$515 for the fine and court costs, and successfully completed his community service. The record did not indicate the status of his probation. (Item 3 at 36-37; Item 4 at 5-6, 9; Item 6)

After Applicant informed his chain of command of the May 2014 DWI arrest, which occurred off-base, he received a non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ). The NJP resulted in a reduction in rank, forfeiture of pay, and 45 days of restriction. Applicant was ordered to undertake alcohol abuse treatment. Although he successfully completed that treatment in June 2014, he failed to follow treatment advice to abstain from consuming alcohol and attend Alcoholics Anonymous (AA) meetings. (Item 2; Item 3 at 28, 42; Item 4 at 5, 7)

In his SOR answer, Applicant admitted that he was treated for alcohol abuse in 2014. He also admitted that he failed to follow treatment advice by continuing to consume alcohol and declining to attend AA meetings. The record does not otherwise address whether he has ever been diagnosed with alcohol abuse or another alcohol use disorder. In his September 2020 response to interrogatories, Applicant listed "Fit for Duty" as the diagnosis he received in 2014. (Item 2; Item 4 at 21)

In January 2015, while on active duty, Applicant consumed purportedly one 40-ounce light beer, while watching a football game at a friend's house. He did not think he was too impaired to drive home. During his drive home, a police officer pulled Applicant over for speeding. He was arrested and charged with DWI, driving while license revoked for impaired driving (DWLR), and speeding. The facts and circumstances of his arrest were not indicated in the record. In February 2015, he pled guilty to DWLR and speeding pursuant to a plea agreement in which the DWI charge was dismissed. He was sentenced

to 45 hours of community service and twelve months of unsupervised probation, both of which he successfully completed. He paid \$395 for a fine and court costs. (Item 4 at 8; Item 6; AX III)

In May 2015, while on active duty, Applicant consumed alcoholic beverages, in an amount that he could not recall, while attending a wedding. He borrowed a friend's vehicle so that he could leave the wedding to get food from McDonalds. While Applicant was driving, at approximately 2:11 a.m., a police officer observed the vehicle crossing the fog line several times with the passenger side tires. The officer pulled Applicant over after observing the vehicle cross the fog line completely and drive partially in the grass. During the traffic stop, the officer could smell an odor of alcoholic beverage coming from the driver's side window. Applicant told the officer that he had not been drinking. The officer observed that Applicant's speech was "very slurred" and that he fumbled with his wallet when asked to produce a driver's license. When exiting the vehicle, Applicant staggered. The officer could smell a strong odor of alcoholic beverage emanating from Applicant's breath, and observed him to have "very bloodshot" and "glassy" eyes. After Applicant failed three field sobriety tests, he was arrested and charged with OVI. The officer noted that Applicant's movements were "over exaggerated." While being processed at the police station, Applicant underwent two breathalyzer tests within four minutes. The first registered a .197 blood alcohol level (BAC); the second a .207 BAC. He was also charged with OVI with a breath alcohol concentration of .17 gram or more (OVI .17 Breath). At his initial court appearance in May 2015, his driver's license was suspended until August 2015. In September 2015, Applicant pled guilty to OVI for which he was sentenced to three days in jail and fined \$500. The OVI .17 Breath charge was dismissed. (Item 3 at 37-38; Item 4 at 6, 9; Item 7; Item 9)

The record did not indicate whether Applicant received another NJP following either of the 2015 alcohol-related incidents. However, in March 2016, Applicant received a general discharge under honorable conditions from the Marine Corps for alcohol rehabilitation failure. He maintained that his alcohol use did not negatively impact his duty performance. However, he acknowledged that it negatively impacted his military career since he was discharged earlier than his End of Active Service (EAS) date. (Item 3 at 41; Item 4 at 5)

In November 2017, Applicant consumed purportedly four alcoholic beverages, while at a bar with a friend. Applicant lost his keys and phone while at the bar and had no way home after his friend left him. After exiting the bar, Applicant approached a police officer. The officer smelled a strong odor of an alcoholic beverage emanating from Applicant's breath and body, and observed him to have bloodshot and watery eyes, extremely slurred speech, and an unsteady balance. Because Applicant was in a public place with no party to control him, the officer attempted to call a taxi for him but was unable to reach one. Applicant told the officer that he did not know the phone number of anyone that could come get him. Based on his level of intoxication, the officer deemed Applicant to be a danger to himself and others. Applicant was arrested and charged with public intoxication. He spent one night in jail. In March 2018, the charge was dismissed for reasons unknown to Applicant. He believed that he did not do anything wrong. However, he acknowledged that he had been belligerent towards the officer during their

interaction, but alleged that it was the result of feeling that the officer was harassing him for crossing the street to use the phone. (Item 3 at 39; Item 4 at 6, 10; Item 8)

Applicant's complete history of alcohol consumption was not developed in the written record. He could not recall when he began to consume alcohol, but described his alcohol use during several time periods. Prior to his March 2009 arrest, he consumed alcohol about two to three times per week, on weekends in social settings with friends. He would drink about five to six beers each time, which was the amount it took for him to become intoxicated. After his March 2009 arrest, he decreased his consumption to about one to two times per month; about two to four beers each time. As of September 2019, he consumed alcohol every two or three weeks. From November 2019 through September 2020, he abstained from consuming any alcohol. Without indicating a specific timeframe, he reported that his consumption prior to November 2019 was one drink (beer or liquor) every three weeks. (Item 4 at 7, 12-13, 19, 20, 24)

At no point in the record did Applicant acknowledge having a problem with alcohol. During his 2012 SCI, he stated that he did not believe that he had a problem with alcohol. He professed an intent to continue responsible use of alcohol and declared that he would not drive a vehicle after consuming alcohol. During his September 2019 SCI, Applicant acknowledged that his alcohol use contributed to his legal, but not any other, problems. He attributed his alcohol-related criminal offenses to having fun, being immature, and trying to show off for his friends. He vowed to follow the law and stay out of trouble in the future by only having one drink and using ride-share services for transportation when he drank outside of the home. During his October 2019 SCI, he attributed his May 2014 DWI and May 2015 OVI to being young and making dumb decisions. During his November 2019 SCI, he reiterated that immaturity and wanting to have fun underlay his January 2015 DWI. He affirmed that he would follow the law and prevent future alcohol-related driving offenses by never driving after consuming any alcohol. (Item 4 at 7, 8, 10, 13)

Applicant asserted that he last consumed alcohol to intoxication in November 2019, and last blacked out in October 2017. From November 2019 through September 2020, he abstained from consuming any alcohol because "it was time for a change," and he did not want to "screw the opportunity up [*sic*]" to work in the avionics position offered to him, which he anticipated would provide him with job security and financial stability. In his September 2020 response to interrogatories, Applicant indicated that he was committed to sobriety, asserting: "I knew if I continued to consume alcohol I was likely to make a bad decision, and possibly lose my job. I took a hard look in the mirror and realized I have a great career in Avionics, and don't need alcohol to sustain life." He also extolled the benefits of sobriety, declaring: "Mentally and physically [*it's*] the best I've felt in years." There was no indication in the record that Applicant has either sought or received sobriety support from any individual, group, or resource since his 2014 command-ordered treatment. (Item 4 at 19, 20, 23, 24)

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 five alcohol-related criminal charges, alcohol abuse treatment, failure to follow treatment recommendations, and service discharge for alcohol rehabilitation failure 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; and

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.

The recommendations that Applicant received following his 2014 alcohol abuse treatment arguably indicated a serious alcohol problem. However, the record did not establish that Applicant has ever been diagnosed with alcohol abuse or another alcohol use disorder. Thus, AG ¶ 22(d), (e), and (f) cannot apply. Nonetheless, the fact that he received treatment for alcohol abuse with recommendations to abstain from consuming alcohol and attend AA meetings remains relevant to the underlying concerns.

Having considered all of the factors set forth in AG ¶ 23 that could mitigate the concerns under this guideline, I find the following relevant:

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's history of excessive alcohol consumption spanned a period of more than 10 years, from at least March 2009 (age 19) through November 2019 (age 30). The facts and circumstances underlying that history demonstrate a pattern of questionable

judgment and cast doubt on his current reliability and trustworthiness. They also raise questions about his ability or willingness to comply with laws, rules, and regulations.

While Applicant benefited from reduced charges in three of his four alcohol-related convictions and a dismissal of the November 2017 charge, the excessive alcohol consumption and poor judgment that underlay each incident remains security significant. The concerns about Applicant's alcohol-related driving offenses are further exacerbated by their timing. The May 2014 and two 2015 incidents occurred while he served in the Marine Corps and possessed a security clearance, and after declaring during his 2012 SCI that he would not drive after consuming alcohol. Both 2015 incidents happened after he received a NJP under Article 15, after he underwent alcohol abuse treatment, and after he was advised to abstain from consuming alcohol. Both 2015 incidents took place during the two-year period of probation he received for his 2014 DWI conviction; one while his driver's license was suspended. The second 2015 incident occurred during the one-year period of probation he received for the first 2015 incident. The 2017 incident occurred after his service discharge for alcohol rehabilitation failure.

The fact that Applicant was able to abstain from using marijuana, which he recognized posed a threat to his military career, but not alcohol, raises questions about his ability to control his alcohol consumption. Applicant's failure to comply with recommendations following his 2014 alcohol abuse treatment and the alcohol-related incidents that followed suggest that he had not yet either acknowledged or accepted that he may have limitations with alcohol. While he reduced his alcohol consumption over time, he did not stop consuming alcohol until two weeks following his November 2019 SCI. Applicant discrepantly reported that he had been consuming only one alcoholic beverage every three weeks in the period prior to becoming sober in November 2019, while also acknowledging that he had last consumed alcohol to intoxication in November 2019.

In September 2020, Applicant signaled that he was committed to continuing his sobriety, but there was no indication in the record that Applicant has either sought or received sobriety support from any individual, group, or resource since his 2014 command-ordered treatment. However sincere his commitment to sobriety may be, there has neither been a sufficient passage of time without incident, nor a sufficient pattern of modified behavior, for me to conclude that Applicant's excessive consumption of alcohol and questionable judgment are behind him. AG ¶¶ 23(a) and (b) are not established.

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 adjudicative guidelines, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, an administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

