



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



In the matter of: )  
)  
) ISCR Case No. 20-03541  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esquire, Department Counsel  
For Applicant: *Pro se*

October 18, 2021

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

CEFOLA, Richard A., Administrative Judge:

On October 5, 2018, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 31, 2021, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J (Criminal Conduct); and G (Alcohol Consumption). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines, effective on September 1, 2006.

Applicant answered the SOR on May 7, 2021 (Item 1), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on July 7, 2021. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 5. He was given an opportunity to file objections and submit material to refute, extenuate, or

mitigate the Government's evidence. He received the FORM on July 21, 2021, and did not respond. The case was assigned to me on September 22, 2021.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted the factual allegations in all the Paragraphs of the SOR, with limited explanations as to Paragraphs 1.j. and 2.b., averring "charges dropped."

Applicant is 66 years old, unmarried, and has step child. He works for a defense contractor. (Item 2 at pages 7, 12, 18 and 23.)

### **Guideline G: Alcohol Consumption & Guideline J: Criminal Conduct**

1.a.-1.k., and 2.a. Applicant admits that in August of 1994, he was arrested for and found guilty, in part, of Driving Under the Influence of Alcohol (DUI). He was sentenced to four days in jail and fined \$1,500. [Listed chronologically below.]

Applicant admits that about four years later, in April of 1998, he was arrested for and found guilty, in part, of DUI, and of Driving on a Suspended License. He was sentenced to four days in jail and fined \$1,760.

Applicant admits that about two years later, in August of 2000, he was arrested for Disorderly Conduct, Under the Influence of Alcohol/Drugs. Applicant avers that these charges were dropped, and nothing further is alleged.

Applicant admits that less than a year later, in May and July of 2001, he was arrested for and found guilty, in part, of DUI, and of Driving on a Suspended License. He was sentenced to 60 days in jail, 45 days of home detention, and fined \$1,250.

Applicant admits that about eight years later, in July and October of 2009, he was arrested for and found guilty of a fourth DUI. He was sentenced to four days in jail, and fined \$2,000.

Applicant admits that about eight years later, in January of 2017, he was arrested, in part, for a fifth DUI, for having an Expired Registration, and for Violation of License Restrictions. He was fined, ordered to attend Alcoholics Anonymous (AA) meetings, and to provide proof of a valid license and registration. (Item 5.)

Applicant admits that about two years later, in March of 2019, he was arrested for and found guilty of a sixth DUI. He was sentenced to 10 days in jail, ordered to attend 60 AA meetings, fined \$2,100, and placed on probation until May of 2024.

Applicant admits that he consumed alcohol in excess and to the point of intoxication from about 1967, and that he currently consumes alcohol to the point of intoxication, weekly.

## **Guideline J: Criminal Conduct**

2.a. has been discussed, above.

2.b. Applicant admits that in April of 1998, he was arrested for Assault with a Deadly Weapon without a Gun. Applicant avers that these charges were dropped, and nothing further is alleged.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or

sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline G: Alcohol Consumption**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may apply:

(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;

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

(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;

(e) the failure to follow treatment advice once diagnosed; and

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

Applicant has \_\_\_ alcohol-related incidents between \_\_\_ and \_\_\_.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

(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; 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.

Applicant

## **Guideline J: Criminal Conduct**

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

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

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case:

(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;

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

(c) individual is currently on parole or probation.

Applicant was convicted of \_\_\_\_\_ offenses. He was on probation for three years after his first conviction in October 2010. On June 15, 2017, he was placed on probation until June 14, 2018. His driver's license was restricted after his first conviction and suspended for six months after his second conviction. The evidence establishes the above three disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

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

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

Sufficient time has not passed since Applicant's \_\_\_\_, given the fact that he was previously convicted of two DUIs. Within the past month, he was convicted of a third DUI and placed on probation for one year. Although he provided evidence of successful work with his employer, that evidence does not outweigh the fact that he is now on probation. The evidence does not establish mitigation under either of the above conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant made \_\_\_\_\_. There is nothing to diminish Applicant's current reliability, trustworthiness, or good judgment by

either of the alleged security concerns. My comments regarding each guideline are incorporated here also.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alcohol consumption, and drug involvement and substance abuse.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge