



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-01079  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: Bradley P. Moss, Esq.

02/14/2022  
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**Decision**  
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WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and hearing testimony, Applicant mitigated alcohol consumption concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

**Statement of the Case**

On October 14, 2020, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the alcohol consumption guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); 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.

Applicant responded to the SOR on November 10, 2020 and requested a hearing. The case was assigned to me on August 23, 2021. A hearing was scheduled for November 4, 2021, and heard on the same date. At the hearing, the Government's case consisted of seven exhibits. (GEs 1-7) Applicant relied on four exhibits (AEs A-D) and four witnesses (including himself). The transcript was received on November 15, 2021.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record as needed. For good cause shown, Applicant was granted seven days to supplement the record as needed from Applicant's substance abuse counselor. The Government was afforded two days to respond. Within the time permitted, Applicant supplemented the record with a supporting letter from his spouse, but did not include a post-hearing submission from his substance abuse counselor. Applicant's submission of his spouse's letter was admitted without objection as Applicant's AE E.

### **Summary of Pleadings**

Under Guideline G, Applicant allegedly (a) was arrested and charged on November 2018 with or driving under the influence (DUI) of alcohol, DUI per se, driving while impaired by alcohol, driving while so far impaired by alcohol cannot driving safely, and negligent driving vehicle in careless and imprudent manner endangering property, life, and person, pleaded guilty to the DUI charge, and was sentenced, *inter alia*, to two years of confinement (all but 90 days suspended), mandatory outpatient alcohol treatment, and probation through August 2021; (b) was arrested in February 2017 for DUI, pleaded guilty to DUI, and was sentenced to, *inter alia*, four days of confinement and payment of a fine; and (c) was arrested and charged with, *inter alia*, DUI of alcohol per se, pleaded guilty to the charge and received probation before judgment, during which time he was required to complete an alcohol substance abuse class.

In his response to the SOR, Applicant admitted each of the allegations covered by SOR guideline G. He provided no explanations or clarifications of his answers.

### **Findings of Fact**

Applicant is a 37-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married his former coworker in October 2021 following a dating relationship that began in 2020. (AE E; Tr. 103, 129) He has one child (a son, age 18) from a prior relationship, who resides with his mother. (GE 1; Tr. 136-138) While Applicant has not seen his son in 10 years (Tr. 137), he has stayed in contact with him

and continues to provide financial support to him. (Tr. 141) Applicant averred that his son enlisted in the Marine Corps following his high school graduation. (Tr. 138)

Applicant earned his high school diploma in June 2003 and has earned several certifications in the IT field since graduating from high school. (GE 1; Tr. 73) He attended college classes, beginning in September 2019, and recently earned a bachelor's degree in network security (Tr. 104) Applicant enlisted in the Army in September 2003 and served one month of active duty before being discharged under the Army's early separation guidelines. (GE 1; Tr. 104)

Since September 2015, Applicant has been employed by his current employer as a senior system administrator and more recently as a cloud compliance lead. (GE 1; Tr. 73) For the past eight years, he has been involved professionally in the information technology (IT) field. Between June 2005 and September 2015, Applicant worked for other non-defense employers in various jobs. (GE 1)

### **Applicant's alcohol consumption and arrest-history**

Applicant was introduced to alcohol at the age 15 (mostly beer). (GE 2) Alcoholism runs in his family. (Tr. 109) From ages 18 to 22, he regularly consumed alcohol socially (mostly mixed drinks) and often drank to a level of intoxication in social situations with co-workers and friends on weekends. (Tr. 111)

Between September 2011 and November 2018, Applicant was involved in three-alcohol-related incidents. (GEs 2-7 and AEs A-D; Tr. 75-102) In September 2011, after hanging out and drinking with a friend at a party, he was stopped by police for a cited inoperable license plate. (GE. 2) After administering a field sobriety test of Applicant, the officer arrested Applicant and charged him with DUI, DUI per se, and driving while impaired by alcohol. Applicant pleaded guilty to DUI per se and received probation. (GEs 1-2 and 7) His probation conditions included a requirement that he complete an alcohol substance abuse class. (GE 7)

Following his 2011 DUI incident, Applicant ceased drinking for approximately three years before resuming his consumption, mostly in social situations. (GE 2 and AEs A and D) In February 2017, Applicant had consumed alcohol socially with friends to the point of intoxication before driving home (Tr. 114). While driving at a high rate of speed, he was stopped by a police officer who noticed Applicant's tires were spinning. (GE 6) Noting a strong smell of alcohol on Applicant's breath, in addition to glassy, bloodshot eyes, the officer administered standard field sobriety tests on Applicant. Citing Applicant's test failures, the officer administered a preliminary breath test. Test results produced a blood alcohol content (BAC) percentage of .14 per cent. Based on these test results, the officer arrested and charged Applicant with DUI, DUI per se, driving while impaired by alcohol, and driving while so far impaired by alcohol that he could not drive safely. (GE 5)

Appearing in court on his 2017 DUI charges, Applicant pleaded guilty to DUI per se and was sentenced to, *inter alia*, four days of confinement, and payment of a fine.

(GE 4). Following his DUI incident, Applicant abstained from alcohol for a year before resuming his alcohol consumption in 2018. (GEs 2 and 5)

In November 2018, Applicant was arrested and charged with DUI and other alcohol-related charges after being questioned at the scene of an accident involving Applicant. (GEs 2-4 and AEs A and D). Before leaving a restaurant for home, Applicant consumed three beers and two martinis with friends without feeling intoxicated. (Tr. 126-129) Arrest reports confirm that Applicant declined to take a sobriety test at the scene and was arrested and charged with four related counts of DUI. (Tr. 126-127) At the request of arresting police at the scene, Applicant was escorted home by a neighbor. (GE 4) In court, Applicant pleaded guilty to DUI in January 2019 and was sentenced to, *inter alia*, two years of confinement (all but 90 days suspended), mandatory outpatient alcohol treatment, and probation through August 2021. (GEs 1-4 and AEs A and D)

In compliance with his 2018 DUI treatment requirements, Applicant enrolled in an outpatient alcohol counseling and treatment program in January 2019. (AE A) While his treatment counselors did not diagnose him with any form of alcohol disorder, they did recommend his enrollment in Alcoholics Anonymous (AA), and abstain from drinking for the duration of the program. (AE A; Tr.130) The program ran for 26 weeks over a six-month period (2019-2021), during which time Applicant abstained from all alcoholic beverages. (AE A; Tr.130) Applicant successfully completed his 26-week alcohol treatment program in September 2019. (AE A). His program counselors credited him with consistent attendance and active, significant, and introspective group participation. (AE A)

During his 2019 counseling and treatment program, he was administered three random drug screens, all of which returned negative results in every drug classification (including alcohol). To reinforce his lifestyle changes and the need for total abstinence, his program counselors recommended weekly support meetings for a minimum of three months following his discharge. (AE A) Applicant accepted and complied with the program's abstinence recommendations and weekly support meetings and was credited with successfully completing the program in September 2019. (AE E; Tr. 145-146)

Following his enrollment in his 26-week outpatient program in January 2019, Applicant essentially abstained from alcohol. While he was not recommended to abstain from alcohol entirely by the substance abuse counselor he consulted with in a post-discharge counseling session in September 2021, she did enter a 10-point score from the Michigan Alcohol Screening Test (MAST) she administered to Applicant in her counseling session with him. His counselor was able to neutralize this high point score by characterizing it as a reflection of his past DUI incidents that did not necessarily correlate with the abstinence he practiced since his last DUI incident in 2018. (AE D; Tr. 148) Crediting Applicant with over two years of sustained abstinence, his counselor assigned a positive prognosis to Applicant's ability to keep his alcohol consumption under control. (AE D)

Since his 2018 DUI incident, Applicant he has consumed alcohol on only two occasions: once in January 2019 and once in a toast at his wedding in October 2021.

(Tr. 30-36, 129-130) He has attended AA meetings regularly between January 2019 and August 2021, and with the support of his spouse and support groups (inclusive of AA), he has maintained his sobriety (save for the two cited exceptions). (AEs A and D-E; Tr. 130-131)

Further, since his last DUI incident in 2018, Applicant has not been involved in any alcohol-related incidents or abused alcohol in any way. Corroborating his abstinence assurances are negative screen results from three non-randomized drug and alcohol screens conducted in August and September 2021, respectively. (AE C)

### **Endorsements and awards**

Applicant is well-regarded by his supervisors (past and present), family, and friends who know him (both at work and socially), and are aware of his prior DUI incidents. (Tr. 22-25) AEs B and G; Tr. 45-46) None of his references have seen him intoxicated, either at work or in non-work situations. (Tr. 32-70) Uniformly, they credited him with an exceptional work ethic, trustworthiness, and reliability in the performance of his work responsibilities. (Tr. 22-31, 44-49) Applicant is credited with receiving promotions in recognition of his exceptional contributions and demonstrated strong work ethic. (Tr. 45-48) All of Applicant's supervisors, spouse, and colleagues, past and present, believe that Applicant possesses the level of honesty, trustworthiness, reliability, and judgment requisite for holding a position of trust.

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. Eligibility for access to classified information may only be granted "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 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Alcohol Consumption**

*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. AG ¶ 21.

### **Burdens of Proof**

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. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 (4<sup>th</sup> 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 disqualifying 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**

Security concerns are raised over Applicant’s multiple alcohol-related incidents between 2011 and 2018 (three in all). All of his DUIs arrests were followed by Applicant guilty pleas and imposed sentences. On the strength of the evidence documented in the record, two disqualifying conditions (DCs) of the alcohol consumption guideline apply: DCs ¶¶ 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 22(c), “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol abuse disorder,” are applicable to the facts of record in Applicant’s case.

Evaluation by Applicant’s substance abuse counselors in 2019, and again in 2021 in a post-discharge session, produced no diagnostic alcohol assessment, but credited Applicant with a positive prognosis that took into account his past two-plus years of abstinence and offered a positive impression of his ability to sustain his abstinence in the future. By all reported accounts, Applicant has fulfilled the promise and expectations his counselor placed in him and has maintained his continued abstinence from all alcohol products.

While alcohol abuse disorder has been held by the Appeal Board to pose a risk that a person under the influence of alcohol could mishandle or fail to properly safeguard classified information (see ISCR Case No. 95-0731 at 3 (App. Bd. Sept. 1996); ISCR Case No. 94-1081 at 5 (App. Bd. August 1995), Applicant has recognized his mistakes implicit in the DUI incidents he was involved in, and has taken important

corrective remedial steps to avoid any future recurrences. Based on these corrective actions, Applicant is entitled to the mitigating benefits of three mitigating conditions (MCs) of the alcohol consumption guideline. MCs ¶¶ 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,” and 23(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,” apply to Applicant’s situation.

### **Whole-person assessment**

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his history of DUI arrests and convictions (three in all over a seven-year period) is incompatible with his holding a security clearance. Considering his civilian contributions to the defense industry and the corrective steps he has taken to avoid future recurrences of misjudgments implicit in his three DUI incidents, Applicant’s defense contributions, weighed together with his mitigation efforts, are enough to overcome his alcohol abuse history.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude alcohol consumption concerns are mitigated. Eligibility for access to classified information is granted.

### **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:

GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT

Subparagraphs 1.a-1.c: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Roger C. Wesley  
Administrative Judge