



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



In the matter of: )  
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----- ) ISCR Case No. 21-02143  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2022

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He did not present sufficient evidence of reform and rehabilitation in light of his lengthy history of excessive alcohol consumption. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, in May 2020. (Exhibit 3) The automated version of the SF 86 is the e-QIP. The SF 86 is commonly known as a security clearance application.

Applicant was interviewed during the course of a 2021 background investigation. (Exhibit 4) Thereafter, on December 20, 2021, after reviewing the available information, the DoD Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly

consistent with the national interest to grant him eligibility for access to classified information.

The SOR is similar in form and purpose to a complaint, which is the initial pleading that starts a civil action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of a criminal offense. Here, the SOR detailed the factual reasons for the action under the security guideline known as Guideline G for alcohol consumption.

Applicant answered the SOR on January 7, 2022. He admitted the five factual allegations in the SOR in a one-page handwritten response. He requested a decision based on the written record in lieu of a hearing before an administrative judge.

On January 25, 2022, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation. The FORM was received by Applicant on February 11, 2022. He did not submit a written response to the FORM within the allotted time. The case was assigned to me on March 22, 2022.

### **Findings of Fact**

Applicant is a 29-year-old employee who is seeking eligibility for access to classified information for his job as a senior software engineer for a company in the defense industry. He has worked as a software engineer since 2015. His educational background includes a bachelor's degree awarded in 2015. He has not married and has no children.

The SOR alleges a history of excessive alcohol consumption. The allegations appear to be based on information Applicant self-reported in his security clearance application and during his background investigation. (Exhibits 3 and 4) The information he provided during his 2021 background investigation is most informative and is summarized below.

Applicant reported during the background investigation that he had a couple of drinks while a high-school student, but mainly began using alcohol at about age 21. He typically would have six drinks per occasion every couple of weeks. In about June 2014 his cousin passed away due to muscular dystrophy. The death hit Applicant hard. As a result, he increased his consumption to six beers or liquor drinks daily to the point where he became intoxicated. He continued at that level until about two or three years ago. Since then to present he drinks about ten beers or liquor drinks daily to the point of intoxication. He drinks at home alone. He stated that his use of alcohol has progressed to the point of addiction and habit. He has no intention to decrease or modify his drinking or to obtain treatment in the future. He stated that he previously sought treatment during 2016-2017 per the advice of his family. He stated that he received a diagnosis of alcohol dependency. He stopped attending the treatment when his therapist or counselor left the organization. He also attended a meeting of Alcoholics Anonymous (AA) in January 2019 but did not return for additional meetings. He does

not believe his use of alcohol has impacted his ability to perform at work, but mentioned that it has made him more anti-social.

Turning next to the matters in the SOR, the allegation in SOR ¶ 1.a is that Applicant has consumed alcohol, at time in excess and to the point of intoxication, since about June 2014 to at least May 2020. The allegation is established by the information Applicant self-reported in his SF 86 and during his background investigation.

The allegation in SOR ¶ 1.b is that Applicant consumes alcohol to the point of intoxication daily. The allegation is established by the information Applicant self-reported in his SF 86 and during his background investigation. In particular, he reported during the background investigation that he drinks about ten beers or liquor drinks daily to the point of intoxication.

The allegation in SOR ¶ 1.c is that Applicant received “treatment” at a specific “AA” [city, state], from about January 2019 to about January 2019. This allegation is misplaced because it is based on a misreading or misunderstanding of his attendance at a single AA meeting in January 2019. Attendance at a single AA meeting, which is a form of self-help and peer support group, does not constitute treatment.

The allegation in SOR ¶ 1.d is that Applicant received alcohol treatment from about September 2016 to about February 2017, and received a diagnosis of alcohol dependence. This allegation is established by the information Applicant self-reported in his SF 86 and during his background investigation.

The allegation in SOR ¶ 1.e is that Applicant has continued to consume alcohol notwithstanding the diagnosis of alcohol dependence mentioned above. This allegation is established by the information Applicant self-reported in his SF 86 and during his background investigation.

## **Law and Policies**

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.<sup>1</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the

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<sup>1</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

side of denials.”<sup>2</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>3</sup> The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>4</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>6</sup>

### **Discussion**

Under Guideline G for alcohol consumption, the suitability of an applicant may be questioned or put into doubt because, as set forth in AG ¶ 21, “excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and it can raise questions about an individual’s reliability and trustworthiness.”

In analyzing the facts of this case, I considered the following disqualifying condition as most pertinent:

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 evidence supports a conclusion that Applicant has a lengthy history of excessive consumption of alcohol that is sufficient to raise a security concern under Guideline G. The disqualifying condition noted above applies here. Note, I did not apply the disqualifying conditions at AG ¶ 22(d) and AG ¶ 22(f), as argued by Department Counsel, because the evidence is not sufficient to establish the qualifications of the person who made the diagnosis. (Exhibits 3 and 4) I also considered all the mitigating conditions under AG ¶ 23, and conclude none apply in Applicant’s favor.

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<sup>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>6</sup> Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

The key facts are not in dispute. Applicant habitually drinks to excess. Whether it's called binge drinking, heavy drinking, etc., he is drinking excessively by any reasonable measure. This conclusion is established by the frequency (daily) and amount (ten beers or drinks) of alcohol he consumes. Even more worrisome is that he does not appear to be interested or motivated to abstain from or modify his use of alcohol.

Applicant stated that his initial trigger for increased use of alcohol goes back to June 2014, when a cousin passed away due to muscular dystrophy. I certainly have empathy for Applicant. I had a great friend during childhood who was afflicted with muscular dystrophy. I served as a pallbearer for his funeral. My friend's passing at about age 19 was tough to take. But I came realize that my friend would have wanted me to get on with things and live my life. My hope here is that Applicant—who is still a young man at age 29—comes to realize there is a better way to live his life. Likewise, I strongly encourage Applicant to obtain qualified professional help. Given his excessive drinking and past diagnosis of alcohol dependence, it is highly likely Applicant would benefit from a rigorous alcohol-treatment program, such as inpatient treatment followed by appropriate aftercare. But until he does so and can show substantial evidence of reform and rehabilitation, he will continue to be an unsuitable candidate for eligibility for access to classified information.

Following *Egan* and the clearly consistent standard, I have doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline G:	Against Applicant
Subparagraphs 1.a, 1.b, 1.d, 1.e:	Against Applicant
Subparagraph 1.c:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility is denied.

Michael H. Leonard  
Administrative Judge