



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-00720  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

05/12/2022

**Decision**

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the alcohol consumption and criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 1, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and J (criminal conduct). Applicant responded to the SOR on an undisclosed date, and requested a decision based on the written record in lieu of a hearing. She provided no documents with her SOR response.

Department Counsel submitted the Government’s written case on January 27, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that she had 30 days from her date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 10, 2022. As of March 30, 2022, she had not responded. The case was assigned to me on April 12, 2022. The Government exhibits included in the FORM are admitted into evidence without objection.

## Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations in SOR ¶¶ 1.a and 1.b without further comment. She neither admitted nor denied the cross-alleged allegations under Guideline J, so I find that she has denied those allegations. Applicant's admissions are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 27-year-old employee of a defense contractor. She has worked for her current employer since September 2017. She earned a bachelor's degree in June 2017. She has never been married and has no children. (Items 3, 4)

Applicant has two alcohol-related criminal offenses. In March 2018, despite knowing that her employer prohibited alcohol consumption during working hours, she drank two mimosas at a restaurant while on her work lunch hour. She then drove back to her place of employment. While driving back to work, she was stopped by a police officer, arrested, and charged with driving under the influence (DUI). She spent the night in jail. She hired an attorney to help her fight the charges because she thought she had been treated unfairly by the police officer because he would not verbally divulge her blood alcohol content (BAC) level. After requesting an analysis of her blood at a hospital, it was determined that her BAC was over the .08 legal limit. She ultimately pleaded guilty to the charge of Operating a Vehicle with Alcohol Concentration Equivalent to at Least .08 but Less than .15. She was sentenced to 60 days in jail with 56 suspended, 180 days of probation, random drug and alcohol testing, a 60-day driver's license suspension, and \$605 in fines. She completed all of her sentencing requirements. She had not consumed alcohol during work hours before this incident and has not done so since. (Items 1-5)

Prior to her guilty plea, she underwent an alcohol and drug evaluation from an individual who is a licensed social worker, licensed chemical dependency counselor, and certified substance abuse counselor (Clinical Evaluator). The Clinical Evaluator reviewed the results of an in-person interview with Applicant, the results of Applicant's Substance Abuse Subtle Screening Inventory, and the Behavior and Attitude Drinking and Driving Scale. Based upon these measurement tools, the Clinical Evaluator opined that there is no probability of an alcohol abuse disorder and a low chance of her drinking and driving in the future. The Clinical Evaluator recommended that Applicant attend a 12-hour substance abuse program, which Applicant completed in July 2018. (Items 3, 4)

Despite knowing that she should tell her employer about her March 2018 arrest, Applicant did not do so. Initially, she did not tell her employer because she thought the charges might be dropped. Once she was convicted of the DUI, she did not tell her employer because she forgot. (Item 4)

In May 2019, after drinking for several hours at a friend's house, Applicant drove home despite feeling intoxicated. On her way home, she hit a curb and side-swiped a tree, shattering her passenger side window. She resumed driving home because she had not damaged anyone else's property and her car was still drivable. Approximately

two minutes later, she was stopped by a police officer for speeding and arrested again for DUI. She spent two nights in jail. (Items 1-5)

In order to attempt to mitigate any potential criminal penalties, she had another alcohol evaluation. This alcohol evaluation was completed verbally and the diagnosis is unknown. The evaluator recommended that she attend 36 hours of group therapy, which she completed in August 2019. On January 13, 2020, she pleaded guilty to felony DUI. She was sentenced to 730 days of home detention with 545 days suspended and two-days credit for time served, along with 540 days of probation. She had her driver's license suspended and was ordered to pay fines. She completed her probation period in December 2021, as well as all other requirements of her sentence. Despite knowing that she should tell her employer about her second DUI arrest, she did not do so because she forgot. She claimed that she will tell her employer about both DUIs. (Items 1-5)

After her May 2019 DUI, Applicant decided to stop drinking entirely. There is evidence that she has abstained from alcohol until at least June 2021 when she submitted her interrogatory responses. However, there is no evidence that Applicant has continued to abstain from alcohol after June 2021. Applicant was on probation when she answered those interrogatories. The group therapy she attended in August 2019 allowed her to more fully understand the negative impact alcohol was having on her life and strengthened her resolve to abstain from alcohol in the future. Applicant understands that she has a problem with alcohol, but believes it is not related to addiction. Instead, her issue is that once she begins drinking alcohol, she has a difficult time stopping her consumption until she is extremely intoxicated. She does not attend any alcohol counseling or treatment. (Item 4)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline G, Alcohol Consumption**

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder; and

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

Applicant was arrested for DUI in 2018 and 2019. Prior to her 2018 DUI arrest, she had been drinking on her lunch break and was driving back to work. The above disqualifying conditions are established.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(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 required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has had two DUI arrests since March 2018. Her May 2019 DUI resulted in a felony conviction. It has only been about five months since she ended her court-ordered probation for her second DUI. She stopped drinking once while on probation only to resume drinking and driving just after her first probation ended. While she claimed that she has abstained from alcohol after her May 2019 DUI, she was still on probation when she provided that information in her June 2021 interrogatory responses. Given that she drank and drove again after her first probation ended and there is no evidence after June 2021 that she is still not drinking, I have doubts about her current reliability and judgment and doubts that her behavior is unlikely to recur.

As to AG ¶ 23(b), Applicant is credited with addressing her alcohol issues through group therapy. However, I have lingering concerns related to Applicant's willingness to violate the law and place others in danger. She has driven a vehicle after consuming alcohol to excess at least two times, resulting in two DUI convictions. Most recently, in May 2019, she sideswiped a tree, shattering her passenger window, yet

continued driving. Applicant's aforementioned resumption of drinking and driving after her first probation, leaves me with doubts regarding whether she has demonstrated a clear and established pattern of modified consumption and compliance with the law. AG ¶ 23(b) does not fully apply. In short, given Applicant's track record, more time is needed for Applicant to demonstrate that she has fully mitigated the security concerns arising from her alcohol issues.

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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 conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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; and

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

Applicant's two DUIs establish the above disqualifying conditions.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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.

Applicant has not been charged with a crime since May 2019. She has complied with the terms of her probation and made restitution for her criminal activity. However, these facts are insufficient to overcome her two-time DUI history, the last of which involved a conviction for felony DUI. While AG ¶ 32(d) partially applies, I have

unmitigated concerns for the same reasons discussed in my analysis of the alcohol consumption concerns, above.

### **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 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G and J in my whole-person analysis. I also considered Applicant's failure to inform her employer about her DUIs despite knowing that she should. 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."

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the alcohol consumption and criminal conduct 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: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.b:    | Against Applicant |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraph 2.a:         | Against Applicant |

## **Conclusion**

It is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge