



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



In the matter of: )  
)  
) ISCR Case No. 20-01497  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

July 7, 2022

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On October 1, 2020, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines J and G. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on November 9, 2021, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 20, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 18, 2022, scheduling the hearing for March 22, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 and 2, which were admitted without objection. Applicant testified on his own behalf. The record was left open until April 22, 2022, for receipt of additional documentation. On April 22, 2022,

Applicant offered Applicant's Exhibit (AppX) A, which was admitted without objection. DOHA received the transcript of the hearing (TR) on April 4, 2022.

### **Findings of Fact**

Applicant admitted all the allegations in the SOR, except for ¶ 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 42-year-old employee of a defense contractor. (TR at page 6 lines 9~10.) He has been employed with the defense contractor for more than four years. (GX 1 at page 11.) He currently does not hold a security clearance. Applicant is married, and has three children. (TR at page 17 line 18 to page 20 line 8, and GX 1 at pages 34~35.)

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

1.a. and 2.a. In November of 2008, Applicant was arrested for and subsequently was found guilty of, Driving Under the Influence of Alcohol (DUI). (TR at page 22 line 6 to page 27 line 4, and GX 2 at page 10.) He was required to attend Alcoholics Anonymous (AA) meetings for six months, and also required to complete a "a nine-month drug and alcohol course" and "a MADD class, Mothers Against Drunk Driving." (TR at page 26 lines 6~14.)

1.b., 1.d. and 2.a. About ten years later, Applicant was again arrested for Driving Under the Influence of Alcohol. Pursuant to a plea bargain, the DUI charge was dismissed and Applicant was placed on unsupervised probation for five years, until 2023. (TR at page 29 line 15 to page 35 line 4, and GX 2 at page 20.) He was also required to complete an 18-month DUI course, and attend AA meetings for 26 weeks. Applicant's driver's license was also suspended. (GX 2 at page 20.)

1.c. and 1.d. The following year, in September of 2019, Applicant was arrested and charged with Driving Without a License. (TR at page 38 line 7 to page 42 line 9, and GX 2 at page 21.) As part of his sentence, Applicant was placed on unsupervised probation for three years, to run concurrent with the before-mentioned five-year probation. (*Id.*) He is currently on probation.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing the adjudicative process. The

administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government must 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 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 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 information.

Section 7 of Executive Order (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 J - Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Three conditions apply, as discussed below:

(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 individual was formally charged, prosecuted, or convicted; and

(c) individual is currently on parole or probation.

Applicant has three arrests in the last 14 years. He is currently on probation for two of those three arrests. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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 last two arrests, for which he is still on probation. Based on those facts, the evidence continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment. The evidence does not establish mitigation under any of the above conditions. Criminal Conduct is found against Applicant.

## **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 in this case. One condition 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.

Applicant has two alcohol related arrests, resulting in DUI court mandates. This evidence raises the above security concern, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate that concern.

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's history of alcohol-related arrests is troublesome. He has two alcohol-related DUIs, the last one for which he is still on probation. This continues to cast doubt on his trustworthiness. Upon successful completion of his probation, he may reapply for a security clearance, but it is too soon to find the Government's alcohol concerns have been mitigated. Alcohol Consumption is found against Applicant.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security 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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J and G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant's Section Manager has laudatory comment's as to Applicant's job performance. (AppX A.) However, his long criminal history; and his history of problematic alcohol consumption, which resulted in two DUIs, leave me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the criminal conduct, and alcohol consumption security concerns.

## Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge