



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 21-00856  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

07/19/2022

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant drank alcohol irresponsibly at times. He allowed alcohol to negatively impact his judgment on a few occasions, most notably in January 2020, when he was arrested for drunk driving. He has moderated his drinking, and his desire to retain his defense-contractor employment is a strong motivator against recurrence of abusive drinking. Clearance eligibility is granted.

**Statement of the Case**

On June 25, 2021, the Defense Counterintelligence and Security Agency (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G, alcohol consumption, and Guideline J, criminal conduct. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 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 within the DOD on June 8, 2017.*

On September 20, 2021, Applicant responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Referral of the case to the Hearing Office was delayed because of the COVID pandemic. On February 4, 2022, a DOHA Department Counsel indicated that the Government was ready to proceed to a hearing. On February 24, 2022, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national security interests of the United States to grant or continue a security clearance for Applicant. I received the case file and assignment on March 1, 2022.

After some coordination with the parties, on May 12, 2022, I scheduled a hearing for June 8, 2022. At the hearing, five Government exhibits (GE 1 through 5) and 15 Applicant exhibits (AE A through O), including Applicant's response to the SOR as AE A, were admitted into the record without any objections. Applicant and his supervisor testified, as reflected in a hearing transcript (Tr.) received on June 23, 2022.

### **Findings of Fact**

The SOR alleges under Guideline G (SOR ¶ 1), and cross-alleges under Guideline J (SOR ¶ 2.a), that Applicant was convicted of a January 2020 driving under the influence (DUI) offense (SOR ¶ 1.a); that, while intoxicated, he was arrested in September 2018 for breach of peace for which he had to complete an alcohol-intervention course (SOR ¶ 1.b); and that, while intoxicated, he was arrested in May 2018 for disorderly conduct for which he had to complete court-ordered community service (SOR ¶ 1.c). Applicant is also alleged under Guideline G to have consumed alcohol at time to excess and intoxication from about May 2018 to at least January 2020 (SOR ¶ 1.d).

Applicant provided a detailed response in which he admitted the arrests and detailed the circumstances of each incident. He submitted in mitigation that he had reduced his drinking from previous levels and that he had been assessed and found to not need a substance abuse or alcohol-intervention program. (AE A.)

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 25-year-old college graduate with a bachelor's degree in national security studies. During the summer of 2018, following his junior year of college, and again during his semester break in January 2019, he worked as an intern for his current employer, a defense contractor. In early June 2019, he began full-time employment for a company that contracted his services to his current employer. (GE 5.) He began working as a direct hire of his defense-contractor employer in December 2020 in a position of greater responsibility than he held as a contractor. (AEs A, K; Tr. 13, 74.) He holds a secret clearance (Tr. 42), although the date it was granted is not in evidence.

Applicant drank to excess at times while he was in college, especially during his sophomore year. (AEs A, G; Tr. 82-85.) He drank to the point of blacking out “once every few months.” (Tr. 83.) There were nights when he drank too much and did not drink responsibly. (Tr. 85.)

In May 2018, Applicant consumed four to five alcohol drinks while celebrating the end of his junior year in college with some high school friends at a local bar. When he left the bar, he walked over to a vehicle that was the same make and model as a friend’s vehicle. Mistakenly thinking a friend was there to pick him up, he opened the passenger door and attempted to enter the vehicle. The driver exited the vehicle, started a verbal altercation, and it escalated into a shoving match. Applicant was arrested for misdemeanor disorderly conduct. (GE 5; AE A; Tr. 51-52.) He informed his current supervisor about the incident when he was being hired for his summer internship. (Tr. 29.)

In June 2018, the charge was dismissed, and the record of the charge was sealed, in exchange for Applicant completing ten hours of community service. Applicant continues to believe that the charge was expunged from his record. (Tr. 54.) The police jurisdiction involved indicates that the charge was expunged from its records, but the court records show that Applicant’s record was sealed. (AE D.) Applicant fulfilled the community service requirement by recording the names and locations of veterans buried in a couple of cemeteries and placing flags at their graves. (GEs 1, 5; AEs A, C; Tr. 53-54.) The task took him over 20 hours to complete. (AE C.) Applicant now understands that he should have walked away when the driver exited his vehicle. His alcohol consumption and his pride contributed to his actions that night as he was not one to back down at the time. (AE A.; Tr. 52-53.)

In September 2018, Applicant was visited in college by some friends from high school. He went with them to a bar, where he consumed some alcohol before proceeding to a barbecue restaurant where he hung around with his ex-girlfriend of about one month. She had come from a Happy Hour and was likely intoxicated. She asked him about any contacts with other females, and at her request, he gave her his cell phone. She became angry and agitated on seeing some texts on his phone to another female. Whether intentionally or not, she hit him in the face with a glass, causing some lacerations to his nose. (GE 5; AE A; Tr. 56-57.) A friend of Applicant’s, who was present at the time, indicates that Applicant did not instigate or escalate the incident and that Applicant remained calm and did not react. (AE E.) Applicant admits, however, that after she threw the glass at him causing injury, he felt “betrayed” and yelled at her. (Tr. 58.) The police came with an ambulance. Fearing the cost of the ambulance ride, and not thinking clearly because of the assault and the alcohol he had consumed, he refused the instructions of the police to get into the ambulance and was charged with breach of peace in the second degree. Because he had been assaulted, he considered the charge unfair, but he wanted to put it behind him. On the advice of his attorney, he accepted a plea deal. In return for dismissal of the charge, he was required to submit himself for an alcohol assessment and to comply with any recommended alcohol-intervention program or substance-abuse treatment. (GEs 1, 5; AE A; Tr. 59-60.)

Applicant was assessed for substance abuse on November 6, 2018, by a licensed professional counselor at an outpatient substance-abuse intervention facility. He reported that he thought he had a problem with alcohol during his sophomore year of college in that he found himself “having more in one night,” but he “got over that.” He reported that he had used alcohol in 10 of the previous 30 days and averaged four beers or four or five mixed drinks per occasion. At the time, Applicant was struggling with risk factors including his legal involvement, living in an environment where alcohol use was prevalent, and socializing with a group of friends who drink. He appeared motivated to complete court requirements, including any treatment, and had a supportive family and friends. The clinician assessed him with mild alcohol use disorder and recommended that he attend weekly intervention treatment starting on November 12, 2018, to explore the consequences of his alcohol use, and to also attend individual sessions with the clinician. (AE G.)

The clinician told Applicant that he was required by the court to attend “the minimum amount,” which consisted of an eight-week course with weekly urinalysis to ensure he was abstaining from alcohol. Applicant was required to only attend six weeks so that he could finish it before his winter break from college. Applicant successfully completed intervention and individual services on December 12, 2018 (GE 1; AE F, Tr. 61), and the charge was dismissed in January 2019. (Tr. 62.)

On April 28, 2019, Applicant completed and certified as accurate a Questionnaire for National Security Positions (SF 86) for a secret-level clearance for his duties as a contractor in his current employer’s security department. Applicant reported the May 2018 disorderly conduct and September 2018 breach of peace charges, which were dismissed. About the September 2018 incident, he stated, in part:

I was charged with breach of peace second degree for technically being in a bar fight, despite me not striking or attempting to strike anyone physically. I did verbally yell at the girl after the glass hit my face. The court was concerned that I might have provoked the incident as a result of my drinking that night so we made an agreement for me to take an alcohol intervention class in exchange for the charges [sic] to be dropped against me. I did this, believing it to be the faster option between that and pursuing a court case against her. Upon the initial screening at the intervention I was told I did not need any classes but we opted to take the least serious classes anyway. I passed the course with zero incidents and the case was dismissed. (GE 1.)

In response to an SF 86 inquiry into whether he had ever been ordered, advised, or asked to seek counseling or treatment as a result of his use of alcohol, Applicant indicated that he took an alcohol-intervention course from October 2018 to December 2018, and stated:

I made a deal with the family affairs court to do an alcohol intervention course to prove that I was not an alcoholic who was provoking altercations. Upon my initial screening [with] the treatment organization, I was verbally

told that they did not believe that any treatment was necessary but I went on with the least intensive course in order to honor the agreement made with the court. During that time, I also remained sober. (GE 1.)

Applicant discussed the May 2018 and September 2018 incidents during a May 28, 2019 interview with an Office of Personnel Management (OPM) investigator. He admitted that he had consumed three or four beers before the May 2018 incident, and his alcohol consumption may have affected his judgment. He told the investigator that he drank two or three beers with dinner before the September 2018 incident, but he did not believe his consumption of alcohol played any role in that incident. Applicant told the investigator that he was currently drinking two or three beers per week, usually in social settings with friends, but he never drank more than one beer if he has to drive. He claimed that he had consumed alcohol to intoxication only three times: twice at age 18, when he first tried alcohol and had three shots of whiskey and then when he had three or four beers at a house party; and one other time when he was in college and drank four or five beers at a house party on campus. He denied that he had a drinking problem and asserted that he drank responsibly. (GE 5.)

On a Saturday night in January 2020, Applicant drank alcohol to intoxication while watching football playoffs at a friend's house. He now recalls having consumed two mixed drinks and three or four beers. (Tr. 63.) His friends all decided to stay over, and told him not to drive home. After they had all gone to bed, Applicant made a very poor decision to drive home around 2:00 a.m. on that Sunday, because he and his father planned to go to a basketball game later that day. He was pulled over for speeding 75 miles per hour (MPH) in a posted 35 MPH zone. He exhibited signs of intoxication, and he told the police that he had consumed "a few beers." He failed field sobriety tests (Tr. 64) and was arrested for DUI-first offense with a blood-alcohol content (BAC) of .15 or greater and for speeding. His BAC tested at .174% initially and then .171% a few minutes later. (GE 2; AE A.) When he went to work on that Monday, he reported his arrest to his security manager. (AE A; Tr. 30.) The security manager, who knew about Applicant's two incidents in 2018 (Tr. 30-31) but believed Applicant was not at fault in the September 2018 incident (Tr. 38), was "devastated and surprised" to learn of Applicant's arrest for DUI. (Tr. 42.) The company made a timely report to the DCSA CAF of the arrest involving Applicant. (GE 3.)

Applicant pled no contest to the DUI and was ordered to complete his state's driver retraining program; comply with an alcohol assessment and any treatment recommended; complete 20 hours of community service; and pay a fine of about \$500. His driver's license was to be suspended for 30 days, but on his application, he was granted a hardship license to drive to and from work with an Interlock device installed on his vehicle. He had no violations of the Interlock device. In July 2020, the device and all driving restrictions were removed. For his community service, Applicant cleaned a trailer owned by the scout troop through which he had attained the rank of Eagle Scout. (AEs H-I; Tr. 66-67.)

At the start of the driver's training program, Applicant was assessed on November 9, 2020, via a virtual platform due to COVID-19, by a licensed chemical dependency

professional (LCDP). He admitted that he was intoxicated on the occasion of his January 2020 arrest and that he made a bad decision to operate a motor vehicle. He reported current consumption of three or four drinks once a week. He denied any urges to drink alcohol or any withdrawal symptoms. While the clinician believed Applicant might have a mild alcohol use disorder, she did not refer him to substance abuse counseling, but opined that he would likely benefit from driving while intoxicated (DWI) classes to reduce the risk of recidivism and to gain education and insight. (AE J.) Applicant attended the classes, which he indicates were required of all first-time offenders in the driver retraining program, in December 2020. (AEs A, J; Tr. 68.) Due to the COVID-19 pandemic, the DWI classes were delayed and eventually held online. (AEs A, J.) With his completion of the classes, Applicant fulfilled all the requirements of his sentence for the DUI. (Tr. 68.) Applicant considers his decision to drive after drinking to intoxication in January 2020 the worst decision of his life to present. (Tr. 69.)

Applicant was re-interviewed for the OPM on June 8, 2020. About his January 2020 arrest, Applicant told the investigator that he had consumed four beers and two mixed drinks while at a friend's house watching football. He admitted that he had been stopped for speeding and failed field sobriety tests; that while he initially pled not guilty to DUI, he pled nolo contendere in early March 2020. He explained that his family, supervisor, co-workers, and current girlfriend were all aware of his arrest. He denied any chance of recurrence as he had learned his lesson and did not want to jeopardize his employment and security clearance. When asked to detail his alcohol use since his previous interview conducted in May 2019, he stated that prior to his January 2020 arrest, he drank three or four days per week in quantity of three to four drinks at a sitting; that he became intoxicated half the time; and that his drink of choice was and still is beer and Irish whiskey. He explained that he had taken no steps to reduce his alcohol consumption as he did not see his drinking to be a problem. After his DUI, he continued to drink beer and whiskey but in quantity of only two or three drinks at a time, and only once a week, usually on Friday nights after work. He stated that he reduced his alcohol consumption after discussing his arrest and the impact of his drinking with his supervisor. (GE 4.)

At his hearing, Applicant testified that he did not always drink responsibly when he was younger, but it did not rise to the level of a substance-abuse problem:

I'll fully admit when I was younger and less responsible of my alcohol that I had issues and I didn't behave as appropriately with it as I do now. But there was no substance abuse issue that I had that directly caused these issues. Alcohol certainly contributed, but it wasn't an issue that I ignored or otherwise let get out of control that caused these instances. But just because I did not have a problem with these doesn't mean that I didn't take what happened very seriously. (Tr. 70.)

Applicant presently drinks alcohol only on the weekends, but not every weekend. He no longer drinks to intoxication because he realizes the trouble it caused him, and he does not want to jeopardize his employment or security clearance eligibility. (Tr. 73, 89-90.) He drank one beer at a social function with co-workers on June 4, 2022. (Tr. 88.)

Applicant no longer socializes with the college friends with whom he drank in college. (Tr. 91.) He continues to socialize with the high school friends with whom he drank on the occasion of his DUI, and he went to a concert with them in August 2021 where at least one of his friends became intoxicated. Applicant drank one beer that night. He made sure that this friend arrived home safely. These friends know of his arrest for DUI and do not pressure him to drink more. (Tr. 94-95.)

Applicant bought a house in May 2022. (Tr. 13, 99.) He is currently in a cohabitant relationship with his girlfriend. They began dating in April 2019. His girlfriend consumes alcohol but not on a regular basis. (Tr. 92.)

### **Character References**

Applicant currently runs the badge control and visitor management office for their facility, and he is directly managed by the supervisor for security services. This supervisor authored character reference letters for Applicant in September 2018 (AE B) and September 2021 (AEs A, K), and he also testified. (Tr. 28-42.) He gives Applicant his highest recommendation, having observed Applicant as a summer intern, contract employee, and as a direct hire into the security department. This security manager considers Applicant to be “one of the most amazing people [he has] ever met in [his] professional career.” Applicant has demonstrated his value to their department. Willing to help others and take on extra tasks, he has a work ethic which the supervisor considers as “nothing short of amazing.” The supervisor asserts that he “cannot think of anyone more loyal and trustworthy to have in that position.” (AEs A, K; Tr. 35-36.) Applicant timely reported the incidents in the SOR to him, including that alcohol was involved, although not the details of the quantities of alcohol consumed. (Tr. 29-30.) At the time, the supervisor scolded him (“I was point blank with him. But then I beat him up a little bit. I dusted him off, then I put him back to work.”). (Tr. 42.) He believes Applicant made “a few bad judgment calls as he was transitioning from a young adult,” and deserves a second chance. Applicant has shown “extreme remorse,” and has taken responsibility for, and learned from, his mistakes. (AEs A, K; Tr. 31-36.) The supervisor has socialized with Applicant outside of work and has seen him consume alcohol. Applicant drank responsibly in those instances. (Tr. 39-40.) The supervisor testified that he will fight for Applicant to stay in his department should Applicant lose his clearance eligibility. (Tr. 40.)

The assistant FSO has also been familiar with Applicant’s work performance since 2018. She was charged with delegating and assigning some tasks to Applicant during his internship, and he displayed a great work ethic. In 2021, she sat on his interview board for a permanent position with their employer. Applicant impressed her as someone who will progress within the company. As the facility’s badge control officer, he works daily with personally identifiable information (PII) and sensitive information (including classified information). The assistant FSO has never questioned Applicant’s ability to properly handle and safeguard that information. He takes national security “extremely seriously.” (AEs A, O.) He completed PII training on December 8, 2021. (AE N.)

The chief of the human resources at Applicant's worksite found Applicant "unique in his professionalism and poise, even as a young intern." Applicant paid attention to detail in every task assigned, and he stood out as a very good teammate. As a contractor, and now as a member of the security team, he continued to demonstrate his value to their employer. (AEs A, L.)

A co-worker with whom Applicant has worked closely indicates that Applicant has been "diligent, attentive to detail, dependable, reliable, and an absolute professional." A self-starter, Applicant sees projects through to their completion. He has also been a reliable and dependable friend to this co-worker. (AEs A, M.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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. 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 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 that 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. Section 7 of EO 10865 provides that 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern about alcohol consumption is set forth 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.

Applicant drank to excess at times, most notably during his sophomore year in college in 2016, when he blacked out from drinking once every few months, and on the occasion of his January 2020 DUI. His consumption of four to five alcohol drinks with some high school friends in May 2018 led to his arrest for disorderly conduct after he became involved in a shoving match with a driver whose vehicle he attempted to enter. Alcohol was also involved in a September 2018 incident where he was assaulted by an ex-girlfriend. Although Applicant was not the aggressor, he refused the instructions of police on that occasion, and he was arrested for breach of peace second degree. Following the incident, Applicant was diagnosed with mild alcohol use disorder. He completed an alcohol-intervention course, during which he abstained from alcohol as required, but once the program was over, he resumed drinking. Between May 2019 and January 2020, he drank alcohol three or four days per week in quantity of free to four drinks at a sitting, becoming intoxicated about half of the time. Then, while watching football with some friends in January 2020, he became heavily intoxicated, as evidenced by his BAC of .174% after being stopped for speeding and arrested for DUI. A LDCP evaluated him for the court and opined that he might have a mild alcohol use disorder, but he was found to not need treatment beyond the DWI classes.

The evidence falls short of demonstrating that Applicant has an alcohol problem that warranted his participation in an alcohol-rehabilitation program. Even so, AG ¶ 22(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,” is established by his diagnosis of mild alcohol use disorder. Moreover, his irresponsible use of alcohol between 2016 and early 2020 triggers the security concerns under AG ¶¶ 22(a) and 22(c), which provide:

(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

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

“Binge drinking is the most common pattern of excessive alcohol use in the United States.” See the Center for Disease Control website, (stating “The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person’s blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours.”), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>. Applicant engaged in binge drinking when he drank to the point of blacking out and before his DUI.

Under ¶ E3.1.15 of the Directive, Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. AG ¶ 23 provides for mitigation under the following conditions:

(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 good 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;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrate a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant’s May 2018 mistake in assuming that the car in the May 2018 belonged to his friend is something that could occur whether or not alcohol was involved. As far as the pushing of the driver is concerned, Applicant testified that he was not one to back down from an insult. However, alcohol clearly had an impact on his behavior that day. Regarding the incident in September 2018, a witness to Applicant’s behavior that night corroborates that Applicant did nothing to instigate or escalate the incident. His refusal to comply with the instructions of the police appear largely due to concerns over the cost of

the ambulance. While alcohol may have had an impact on Applicant's behavior, for purposes of assessing Guideline G, it was minor in that instance. Applicant's January 2020 DUI was isolated as far as evidence of drunk driving is concerned, but AG ¶ 23(a) cannot reasonably apply because the DUI is too recent and too serious.

Factors other than alcohol played a part in Applicant's 2018 arrests, which led to a lack of insight by Applicant about the extent to which alcohol could jeopardize his future. He displayed some minimization of his alcohol use during his May 2019 OPM interview. However, there is significant evidence of mitigation since his January 2020 DUI that establishes AG ¶ 23(b). With the DUI and the scolding from his supervisor, Applicant came to realize that irresponsible drinking could have negative impacts on his future. It motivated him to reduce his alcohol consumption in both frequency and quantity. Applicant's supervisor attests to Applicant's growth since the incident and his remorse for the incident. Applicant has established a pattern of modified consumption for the past 2.5 years. To the extent that he met two of the diagnostic criteria for mild alcohol use disorder (*i.e.*, alcohol use in hazardous situations and increased tolerance), his mild alcohol use disorder would be considered to be in sustained remission under the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM 5) in that none of the criteria for alcohol use disorder have been met at any time during a period of 12 months or longer. He is seen as not likely to jeopardize his job by abusing alcohol in the future. The alcohol consumption security concerns are mitigated.

#### **Guideline J: Criminal Conduct**

The security concern about criminal conduct is articulated 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 unwillingness to comply with laws, rules, and regulations." Although the record of the May 2018 offense was sealed, and the September 2018 charge was dismissed following his completion of the terms of his plea agreement, it does not immunize them from consideration in assessing his security clearance eligibility. Applicant does not dispute that he committed a serious misdemeanor by drunk driving in January 2020. Two disqualifying conditions under AG ¶ 31 apply. They are:

- (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 January 2020 DUI is too recent to be mitigated under ¶ 32(a), which states:

(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.

The high quality of Applicant's work for his employer, and the absence of any alcohol-related behaviors on the job provide considerable evidence of rehabilitation in this case under AG ¶ 32(d), which provides:

(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.

To the extent that mitigation has been shown, the risk of recurrence of criminal conduct depends largely on whether he can be relied on to drink responsibly in the future and not allow his drinking to negatively affect his judgment. The efforts Applicant has taken to moderate his alcohol consumption are positive evidence in that regard. The criminal conduct security concerns are mitigated for the same reasons they are mitigated under the alcohol consumption guideline, *supra*.

### **Whole-Person Concept**

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

(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.

The analyses under Guidelines G and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Although it does not justify his alcohol-related incidents, Applicant's irresponsible drinking occurred when he was in his early 20s. His youth and socialization with others of like age who consumed alcohol clearly impacted his decision making. Applicant's value to his employer is undisputed. The adverse impact of a clearance decision on an applicant or his employer is not a relevant consideration in determining national security eligibility.

See, e.g., ISCR Case No. 19-01759 at 3 (App. Bd. June 8, 2020) (citing ISCR Case No. 11-13180 at 3 (App. Bd. Aug. 21, 2013)). The security clearance adjudication involves evaluating an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). In that regard, Applicant is credited with timely notifying his supervisor about his arrests. He told his manager about his May 2018 disorderly conduct when he was being considered for his summer internship. On the Monday following his DUI arrest over the weekend, he told his supervisor about his arrest. He has demonstrated that he can be counted on to comply with the requirement to report issues of security concern, even when it is personally disadvantageous.

Moreover, after the DUI, Applicant continued to hold a secret clearance. He has continued to handle classified and sensitive information, including PII, appropriately and according to security procedures. After considering all the evidence in this case, I find that it is clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge