



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



In the matter of:)
)
) ISCR Case No. 20-03579
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq.

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. Eligibility for access to classified information is denied.

Statement of the Case

On February 16, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on March 8, 2021, and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 30, 2022, scheduling the hearing for August 17, 2022, using Microsoft Teams. I convened the

hearing as scheduled. The Government offered exhibits (GE) 1 through 3. Applicant testified and offered Applicant's Exhibits A through H. The record was held open to permit Applicant to provide additional documents. He timely provided AE I. There were no objections to any of the exhibits offered and all were admitted into evidence. DOHA received the hearing transcript on August 24, 2022.

Findings of Fact

Applicant admitted all of the allegations in the SOR with clarifications. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He earned an associate's degree in 2006 and a bachelor's degree in 2009. He married in 2010, separated in 2012, and divorced in 2014. He has an 11-year-old child. He has been employed by his current employer, a federal contractor, since May 2018. (Tr. 14-17, 41-42; GE 1)

In approximately July 2014, Applicant was reprimanded by his employer after arriving at work hungover and smelling of alcohol (SOR ¶ 1.a). He showed up for work after drinking the night before. He did not recall exactly how much he had to drink, but he did not consume alcohol in the morning before work. He stated that he probably drank between 8 and 10 beers the night before. His supervisor smelled alcohol on him. His supervisor had him work in the office by himself and told him his conduct was unacceptable, and not to do it again. He received a written reprimand. He believed his employer had a three-strike policy. He understood that if he did not comply with the rules, he would lose his job. Applicant continued to consume alcohol, but thought he drank less. He agreed that sometimes his drinking impacted his ability to get to work on time. He testified that he was unhappy and was using alcohol to cope. He drank every day. Later his life improved. (Tr. 17-19, 59-64)

In July 2015, Applicant received a second reprimand from his employer as a result of his excessive tardiness due to his alcohol consumption. He could not recall how many times he was late for work due to his alcohol consumption, but estimated it was a handful of times when he did not feel well. He said that some of his tardiness was not always attributed to his alcohol consumption. He testified that no one else at work mentioned his tardiness, but his supervisor noticed it. He received a second reprimand and forfeited a bonus he likely would have received. He testified that his drinking at this time was problematic. He understood that he could lose his job. He said after his second reprimand, he made people at work aware if he was going to be late and he modified his drinking (SOR ¶ 1.b). (Tr. 18-20, 64-70)

In October 2016, Applicant's employer sent him on a temporary duty assignment for five months in a foreign country. He would go out to dinner with his fellow employees. A couple of times a week, they would have alcoholic drinks at the hotel bar or infrequently they would go to a different bar. Applicant testified he would have two to three drinks. He testified that on one particular weeknight he had an incident after having more than a

couple of drinks. He became intoxicated, met a woman from a foreign country, and they drank alcohol together. Later that night they had sex, and the next day he went to work late and smelled of alcohol. He said he was a few minutes late for work. He could not recall the woman's name. He knew she had an accent. He held a security clearance at the time. He said he just did not think of this incident as a foreign contact until it was brought to his attention during his background interview. He did not report the contact as required. He explained he just did not think anything of it and even if he had been sober he would not have reported it. (Tr. 19, 70-80)

Applicant said that at the time, none of his fellow employees mentioned that he smelled like alcohol or that he had sex with the foreign woman. When he returned to the United States, a fellow employee who was with him on the trip, reported Applicant's conduct to a supervisor. He was told by the supervisor that even though this was his third strike, he was being given one last chance, but the next time there was an issue, he would be terminated. He was suspended from work-related travel due to this incident. Applicant said he modified his behavior by consuming less alcohol. (Tr. 63, 77-82)

In May 2017, Applicant testified that he had gone to a bar around 7 p.m. and consumed between 8-10 drinks that included beer, mixed drinks, and shots. He left the bar between 12:00 a.m. and 1:00 a.m. and felt fine to drive. He offered his friends a ride. In his statement to a government investigator in June 2019, he said he felt "buzzed" but not intoxicated. He admitted the way he felt would produce lower reaction time and impaired judgment. He was driving about 45 mph and hit the car in front of him. He pulled his car to the side of the road. Someone called the police. The car he hit had a driver and passenger. When the police arrived, he was asked if he had been drinking, which he admitted. His breathalyzer reading was .195%. He was arrested and charged with DUI resulting in personal injury. He stated that after impact the other driver got out of the car and was angry, and they had words. He said he thought the passenger in the other car was injured, but he did not recall, and he vaguely remembered dealing with his insurance company and an injury was mentioned. He had two passengers in his car, both had been drinking with him. Neither were injured. (Tr. 20-22, 82-94)

Applicant pleaded no contest to the charge and was found guilty of DUI with property damage and sentenced to 12 months of supervised probation, assessed fines and court costs totaling approximately \$1,650, and he was required to complete alcohol treatment. He testified he also had to complete 50 hours of community service and his license was suspended for six months (SOR ¶¶ 1.c and 1.d). (GE 1-2)

Applicant could not recall if he reported the DUI to his Facility Security Officer at the time, but the FSO was made aware. He said he told his supervisor. The car crash happened during the workweek and he was detained for 36 hours, so his girlfriend called Applicant's supervisor to tell him why he was not at work. He was subsequently terminated from his employment in June 2017, as a result of his repeated issues with alcohol. He testified that he then modified his drinking. (Tr. 22, 91-95)

Applicant completed the court-ordered alcohol treatment program in May 2018 as part of his DUI sentence. Through this treatment program he was diagnosed by a licensed clinical social worker/substance abuse professional/ diplomat in clinical social work (SW), with Alcohol Dependency, sustained remission. The SW noted that Applicant was actively engaged in the program, but “a little non accepting of a problem with alcohol.” (GE 3) He also noted that tolerance plays “a pretty significant part in his lifestyle” and he exhibits “the defense mechanism of minimization more often than I feel comfortable.” (GE 3) His prognosis was good if he was involved in a support program, such as Alcoholics Anonymous or a church-based program, or other program. Without a support program his prognosis was fair. As part of the program he completed 22 group counseling sessions and 3 individual sessions. The SW advised Applicant that if he wished to follow up with group treatment he could do so free of charge. (Tr. 21-22, 95-97; GE 3)

Applicant testified that as part of his counseling he and the counselor discussed family issues and genetic predisposition. He testified that he has known for a long time that his mother had a DUI, and she has always consumed alcohol, and it is part of their relationship. During his 2019 interview with a government investigator, he disclosed that his mother is an alcoholic and has consumed alcohol his whole life. She has participated in inpatient rehabilitation treatment. He said her alcohol use is now under control and is not an issue. His half-brother, who is now deceased and was in and out of prison, was an alcoholic. He testified that he did not feel comfortable going to AA or a church-based support system. He says his girlfriend, his 11-year-old son, his mother and a family friend are his support group. He said his girlfriend does not drink much. His mother encouraged him to slow down his drinking. She lives in a different state. He did not know why he did not take advantage of continuing counseling with the SW, which is free. Applicant testified that while on probation he did not consume alcohol. When he was released from probation, he celebrated by drinking alcohol. (Tr. 23-24, 96-104, 107-108, 118-119; GE 3)

During Applicant’s 2019 interview with a government investigator, he explained that his alcohol consumption started to slowing increase beginning in 2010 when he drank about once a week to almost daily in 2017 when he was arrested for DUI. At first, he would typically have at least a six-pack of beer, that then increased to 9-10 beers daily until his DUI. (Tr. 44-45; GE 2)

Applicant testified that he has modified his drinking by not drinking every day, but he drinks a couple of times a week and has between 8 and 12 beers at a time, when his son is not present. He said he does not do this every week. He said in the past two weeks he only had two beers. He explained that this is how he modified his drinking. He previously was drinking daily. He said 8 to 10 drinks will make him intoxicated. He only drinks at home now, does not go to bars, and is not endangering anyone. He believed he was alcohol dependent, but he would like to believe he is no longer. He no longer feels physically or mentally dependent on alcohol. He said his use was a product of his environment, which has changed. He stated that he no longer drinks and drives. Prior to his DUI arrest, he drove about once a month after he had consumed alcohol. He said the

DUI was an eye-opener. He continues to drink alcohol when he has custody of his son, but said he does not become intoxicated. (Tr. 25-26, 32-33, 103-107, 113-115, 119-122)

Applicant testified that he and his ex-wife share custody of their child. He would have physical custody three to four days a week and then he and his ex-wife would switch the days the following week. He could not recall if while they were together if she commented on his drinking. He admitted he would consume alcohol when he had his child in his physical custody. His ex-wife addressed his drinking with him after his DUI arrest and told him he had a problem. He does not know if she was aware he consumed alcohol when he had custody of their son. He admitted being intoxicated when he had physical custody of his son, but could not estimate or recall how many times. He estimated about 75% of the time when he had physical custody of his child he was drinking alcohol, until 2017, when he had his DUI. He testified that he did not drink and drive with his son in the car. (Tr. 46-51)

Applicant was living with his girlfriend from about 2011 to 2018. His girlfriend and he would consume alcohol together. His girlfriend also had a small child living with them. There was a three to four-year age difference between the children. Applicant and his girlfriend would share a 12-pack of beer, each consuming 6, while they had the children. He said their consumption was over a five-hour period. At some point his girlfriend voiced concern about their drinking habits. Applicant agreed with her that they were consuming too much alcohol. They would abstain for about a month, then resume when one of them showed up with alcohol. He estimated they abstained about four or five times. They would have alcohol-related arguments. At one point, she wanted him to quit, and he did not want to at the time. Their relationship ended after an alcohol-related argument. (Tr. 44, 51-58)

Applicant testified that his best friend MC talked to him about his drinking and his need to quit. They would talk several times a year after Applicant had consumed alcohol and described MC as a shoulder to cry on. MC finally gave him an ultimatum that they could no longer be friends if he continued to consume alcohol. They are no longer friends. Applicant admits alcohol has had a negative impact on his life, due to job loss, loss of a friendship, and loss of a relationship. He testified, despite the negative impact alcohol has had on his life, he does not know why he has not chosen to abstain from alcohol consumption. He feels he is in a better place now that he is not reliant on others and he is independent. (Tr. 103-105, 109-110)

Applicant has not participated in alcohol counseling since his court-ordered treatment ended in May 2018. In his March 2021 answer to the SOR, he stated he intended to modify his relationship with alcohol and attend counseling to manage his drinking habits. He also provided an exhibit from March 2021 stating that he intended to modify his drinking and attend counseling. When questioned at his hearing if he had attended counseling, he said no. At his hearing, he said he now intends to abstain from drinking alcohol and post-hearing he provided a letter of intent to abstain from drinking and attend counseling. (Tr. 31-32, 110, 113-117, 119-120, 123; AE F, G, I)

Applicant testified that he has learned from his past mistakes and that consuming alcohol is not worth it as it has hurt himself and others, and jeopardized his career. He said the impact alcohol has had on him is now very real because he may lose his job. He does not keep alcohol in the house, but will go to the gas station to purchase it. He testified that his work is phenomenal, he is one of the best workers on a current project, and he is really good at what he does. (Tr. 32-33, 38-40, 68-69)

Applicant provided his resume, education transcripts, photos, and character letters. In them, he is described as hard-working, valued, committed, diligent, conscientious, trusted, kind, considerate, trustworthy, dedicated and a man of character and integrity. (Tr. 26-31; AE A, B, C, D, E, H)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to 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 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concerns for alcohol consumption:

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 ¶ 22 describes conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(a) alcohol-related incidents away from work, such as driving 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 impair condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with an alcohol use disorder;

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

(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;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant was reprimanded by his employer in July 2014 after arriving to work hungover and smelling of alcohol (SOR ¶ 1.a). He was reprimanded by his employer in approximately June 2015 as a result of excessive tardiness resulting from his alcohol consumption (SOR ¶ 1.b). He was reprimanded by his employer in October 2016 after arriving late and smelling of alcohol at his work assignment at a U.S. Government facility in a foreign country, and as a result he was suspended from work-related travel (SOR ¶ 1.c). He was arrested in May 2017 for DUI after he was involved in a car accident. He pleaded no contest and was found guilty. He was required to attend alcohol treatment and in May 2018 he was diagnosed with Alcohol Dependency in remission (SOR ¶¶ 1.d and 1.f) His prognosis was good with involvement in a support program and a fair prognosis if he was not involved. He is not involved in a support program. He was terminated from employment in June 2017 as a result of his repeated issues with alcohol (SOR ¶ 1.e). The evidence supports the application of the all of the above disqualifying conditions, except AG ¶¶ 22 (e) and 22(f).

SOR ¶ 1.g alleged that Applicant failed to seek further counseling and continues to drink alcohol regularly, contrary to the recommendations received incident to the court-ordered treatment program. It is true that he failed to seek further counseling and continues to drink alcohol regularly, but a review of SW's report does not support that he was prescribed a treatment program. He was told counseling was available, but it was not ordered, and there were no other recommendations stated in the report. Therefore, AG ¶¶ 22(e) and 22(f) do not apply to this allegation. However, the facts about his drinking may be considered in assessing his credibility, in the application of mitigating conditions, and in a whole-person assessment.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

- (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;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment or 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 demonstrated a clear and established

pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant repeatedly had problems at work related to his abuse of alcohol. He was given four chances to change his behavior before he was fired after his DUI arrest. He has repeatedly stated after each incident that he modified his drinking. He testified that his modification is to consume about 8 to 12 alcoholic beverages a couple times a week, but not every week. In his March 2021 letter of intent, he stated that he intended to participate in counseling to modify his alcohol consumption, but admitted at his hearing, over a year later, that he had not followed through. He then provided another letter of intent, now stating he would abstain from alcohol consumption and attend counseling. Applicant tacitly acknowledges his pattern of maladaptive alcohol use, but has not provided sufficient evidence of his actions to overcome his problem. I find AG ¶¶ 23(b) and 23(c) do not apply

Applicant completed the court-ordered DUI treatment program, but his prognosis was only good if he had a support group and fair without one. He testified that his mother, who is an alcoholic and continues to drink and a friend are his support group. There were no specific recommendations provided by SW as far as aftercare, only that it was free if Applicant chose to participate. AG ¶ 23(d) has some application because he has completed a treatment program. I am unable to find that he has an established pattern of modified consumption. AG ¶ 23(d) does not apply.

Applicant continues to abuse alcohol despite the negative impact it has had on his employment, friendships, and relationships. His conduct casts doubt on his reliability, trustworthiness, and good judgment. I cannot find that future questionable behavior is unlikely to recur. Despite the serious and potentially devastating impact his alcohol abuse might have on his future, both professionally and personally, Applicant has not made a serious commitment to change. I have considered that he has not had an alcohol-related offense since 2017, but this alone is not enough to mitigate the security issues raised by his alcohol consumption.

The first prong of AG ¶ 23(a) (so much time has passed) focuses on whether the alcohol abuse was recent. There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

I have considered Applicant's history of alcohol abuse to include his multiple incidents at work; incidents away from work; habitual drinking; diagnosis of Alcohol Dependent, in remission; court-ordered treatment; opportunity to attend counseling free of charge; multiple declarations that he modified his drinking habits after each incident; multiple declarations that he was seeking counseling; and his most recent declaration that he would abstain from drinking. Although, not alleged, I have also considered the

risks he willingly takes when consuming alcohol, such as driving, caring for his young child, and having intimate contact with a foreign national when he was intoxicated while holding a security clearance.

Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. (ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

The evidence is insufficient to conclude that Applicant has changed his behavior. He has not taken the necessary steps to address his problem with alcohol, despite repeatedly promising to do so. I cannot find that there are changed circumstances or that he has demonstrated successful rehabilitation. I have considered that he has not had an alcohol-related incident since his DUI arrest and that is some mitigation, but it is insufficient to conclude that his behavior was infrequent, happened under unusual circumstances and is unlikely to recur.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The evidence supports the negative impact that alcohol has had on Applicant's work and life. Of grave concern are the risks he takes when he consumes alcohol, such as having sex with a foreign national, while on assignment in a foreign country after he

had over indulged in alcohol, and consuming alcohol while caring for his son. Applicant does not appear to grasp the seriousness of his conduct or the potential security implications. He failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline G, alcohol consumption.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge