



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



In the matter of:)	
)	
)	ISCR Case No. 21-00056
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

09/02/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant mitigated the alcohol consumption and criminal conduct concerns alleged in the SOR. The security concerns happened under unusual circumstances that are unlikely to recur, and there is evidence of successful rehabilitation. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 21, 2020. On June 25, 2021, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and J, alcohol consumption and criminal conduct. Applicant responded to the SOR on August 16, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on March 17, 2022.

The hearing was convened as scheduled on June 15, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant’s exhibit (AE) A was admitted in evidence without objection. After the hearing, I held the record open to provide Applicant with the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as AE B-H, and admitted in evidence without objection.

Findings of Fact

In his answer, Applicant denied SOR ¶ 1.a, and admitted SOR ¶¶ 1.b, 1.c, 2.a, and 2.b. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact:

Applicant is 30 years old. He earned an associate's degree in 2012, and a bachelor's degree in 2018. He has been employed as a computer programmer by a defense contractor since 2020. This is his first application for a security clearance. (Tr. 10; GE 1)

In July 2012, Applicant was driving his mother to an appointment, and lost control of his vehicle. He stated that he had a seizure and lost muscle control because of a medication that he was taking at the time. The police suspected that he was driving under the influence, and arrested him. His blood was tested right after the accident for intoxicants, and the toxicology report showed that none were found. The case was nolle prosequi by the local county prosecutor's office. (Tr. 43-45, 66-73; GE 3; AE F)

In February 2019, Applicant was arrested for DUI. He stated that he went into a metropolitan area about an hour away to meet friends at a hotel for drinks. He stated that his understanding was that he and his friends would all be staying in the hotel together. At the end of the evening, his friend who rented the hotel room, kicked everyone else out so that he could be alone in the room with his girlfriend. His friends left the area at that time. He claimed that since he was newly out of college, he did not have funds to get another hotel room in the area, and was not able to afford a taxi to drive him home. He was stopped for speeding two blocks from home, and was arrested for DUI. His blood alcohol content (BAC) was .10, which is above the legal limit. He pleaded guilty, and received a suspended 90-day sentence, a restricted license, an ignition lock on his car for 6 months, a monetary fine, and state mandated DUI classes. He stated that he regretted and learned from the incident, that he has better judgment now, and associates with more reliable friends. (Tr. 45-48,58-66; GE 1, 2, 4)

In November 2019, Applicant was arrested for public intoxication. He stated that he had about three drinks of alcohol one evening. He stated that later in the evening, he was working on a car that he was restoring, and wanted to circulate the engine fluids. He drove the car around his apartment building, the car became unresponsive, and he had to swerve into some bushes. After walking back home to call a tow truck, the police arrived at the place he left his car. He was asked by police if he had been drinking that evening, and admitted he had earlier. He was arrested for public intoxication, but was never given a breathalyzer test. The charge was converted to improper control/driving, and he plead guilty, and was fined. He stated that he regretted the incident and recognizes that his actions that evening were a mistake. (Tr. 45-48, 58-66; GE 1, 2, 5)

When Applicant was 17 years old, he was a habitual marijuana user. He stated that in 2009, marijuana became unavailable for a period in the area that he lived. Someone he knew offered to sell him marijuana. He stated that he did not trust this

person, and he had been known to rob people. He reported that when he met this person to purchase marijuana, he took a knife for protection. They met in the parking lot of local shopping center. He stated that he could tell that the drug seller was high when he got into Applicant's car. He stated the seller took \$250 from him, but had no marijuana to sell. He claimed that he demanded his money back, but the seller did not comply, and when he understood that the seller was not going to give his money back, he threatened him with his knife. He stated the confrontation continued out of the vehicle, and he cut the seller twice, and left. He asserted that he used the knife to defend himself. He was eventually arrested by police and charged with felony malicious wounding. He served three years in juvenile prison, and had three years of probation. He stated that he matured a lot while serving his sentence, and understands that he used very poor judgement in that circumstance. He asserted that his drug habit and youth were contributing factors to the incident. (Tr. 48-51, 73-83; GE 1, 2)

While serving his sentence, Applicant completed his GED, and was selected to take some college level courses. He also was chosen to participate in a work-release program, where he worked three different jobs during the week, and returned to the detention facility at night. After he was released, he started attending community college. He had a high GPA at community college, and once he received his associate's degree, he was able to transfer into a regular four-year university. He earned his bachelor's degree in computer science in 2018. He asserted that he has learned from his mistakes, and now only associates with mature people who are role models for him. Applicant stated that he has learned from his two alcohol-related arrests in 2019, and has modified his alcohol consumption. He has a close relationship with family members who act as his support system. He stated that he is committed to serving in a position that serves the interests of national defense, and is willing and able to meet the high standards required of a person entrusted with national security information. (Tr. 46-47, 89-98)

His character witnesses, who have known him about seven years, testified that they have never seen any signs that he abuses alcohol, and have seen him drink appropriately in social situations. They are aware of his criminal history in his youth, and assert that he is a loyal and trustworthy person. (Tr. 17-40)

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

AG ¶ 21 details the personal conduct security concern:

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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 22 and the following are potentially applicable:

(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 a 2019 DWI arrest and conviction, and a 2019 arrest for public intoxication. AG ¶ 22(a) applies to 1.b and 1.c. The toxicology report in the record shows that there was no alcohol involved in the 2012 incident, so SOR ¶1.a is not established and is found for Applicant.

I have considered the mitigating conditions 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; and

(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.

Both of Applicant's alcohol-related arrests are due to immaturity and poor judgment in those particular circumstances. He has acknowledged his mistakes, learned from these incidents, and has modified his alcohol consumption and related behaviors accordingly. He has changed the type of friends he associates with to more mature friends who are role models. The circumstances that led to both arrests are unlikely to recur, and no longer cast doubt on his reliability, trustworthiness, and judgment. AG ¶ 23 (a) and (b) apply to SOR ¶1.b and 1.c.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions 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 has a 2009 felony conviction for malicious wounding, a 2019 DUI, and a 2019 public intoxication arrest. AG ¶¶ 31(a) and 31(b) apply.

The following mitigating conditions for criminal conduct are potentially applicable under AG ¶ 32:

(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's arrest and conviction for malicious wounding occurred under circumstances unlikely to recur. Applicant was only 17 at the time, and is now 30 and much more mature. He no longer uses or buys marijuana, or associates with persons who are involved in criminal activity. So much time has elapsed since this happened, it no longer casts doubt on his reliability, trustworthiness, and good judgment. He completed his sentence and probation. He testified about his rehabilitation, which started while he was serving time in juvenile prison. He has earned college degrees, and successfully started a career in computer programming for a defense contractor. His witnesses and the writers of the letters of recommendation in the record praise his character, professionalism, reliability, and trustworthiness. AG ¶¶ 32 (a) and (d) apply to SOR ¶ 2.a. My comments under Guideline G detail why AG ¶ 32 (a) applies to ¶¶ 1.b and 1.c.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered the testimony of his character witnesses, and his letters of recommendation highlighting his character, trustworthiness and reliability. I have incorporated my comments under Guidelines G and J in my whole-person analysis.

Applicant established that all of the security concerns have been mitigated by time, circumstances that are unlikely to recur, and rehabilitation. He has explicitly stated that he understands the behavior expected of someone granted access to national security information, and is willing and able to meet those standards. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 1.b:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge