



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



In the matter of:)	
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)	ISCR Case No. 21-01570
)	
Applicant for Security Clearance)	

Appearances

For Government:
Rhett Petcher, Esquire, Department Counsel

For Applicant:
Pro se

November 10, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on May 29, 2020. (Item 3.) On November 30, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines J (Criminal Conduct), G (Alcohol Consumption), and E (Personal Conduct). (Item 1 at 1-3.) The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 2, 2021, and requested his case be decided on the written record in lieu of a hearing. (Item 1 at 4-6.) In his Answer, he admitted all the allegations in the SOR. His Answer included additional information and attachments. (Item 1 at 7-9.)

On March 16, 2022, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 4, was provided to Applicant, who received the file on March 22, 2022.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to submit any additional information. The case was assigned to me on June 21, 2022. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 58 years old, married for the second time, and has two children. He received a bachelor's degree. Applicant has been employed by a defense contractor since December 2019 and seeks to obtain national security eligibility and a security clearance in connection with his employment. He worked as a Federal employee for one of the military services as a manager from 1997 until he retired in October 2019. (Item 2 at Sections 12, 13A, 17, and 18.)

Paragraph 1 (Guideline J, Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal conduct that creates doubt about a person's judgment, reliability, and trustworthiness. Applicant admitted all the allegations under this paragraph. All the statements of fact regarding the allegations are from a Report of Investigation (ROI) prepared by an authorized investigator of the Office of Personnel Management after an interview with Applicant taken under oath, except as otherwise stated. Applicant agreed to the accuracy and truthfulness of the ROI in DOHA interrogatories signed by him on August 3, 2021. (Item 4,)

1.a. Applicant was arrested in July 2011 and charged with Driving Under the Influence (DUI). He stated that the court sentenced him to a pre-trial diversion program and his driver's license was suspended. He also had to perform community service, attend Mothers Against Drunk Drivers presentations, and take a drivers' education course. He stated that after completing the diversion program the charges were dismissed and expunged. When questioned as to why this arrest was not set forth in his 2020 e-QIP, discussed below, he stated that he had self-reported it at the time, and he believed the Government should know about it. (Item 4 at 12-13.)

1.b. Applicant admitted that he was arrested in April 2017 and charged with Disorderly Conduct. He stated this incident was the result of an argument between his wife and a restaurant owner, eventually both he and his wife were arrested. He further stated that the court dismissed the charges after one year of no interaction with the restaurant. Applicant stated he could not remember whether he self-reported this incident. He further stated that he did not report this incident on his security questionnaire because he did not think it was required. (Item 4 at 11-12.)

1.c. Applicant admitted that he was charged in July 2019 with a Warrant, Communicating a Threat. During a verbal argument with his wife he stated that he would kill her after she communicated a threat to cut off his penis while he slept. The police were called and Applicant was arrested. He stated that the court initially found him guilty. Two weeks later, on a petition from his wife, the charges were dismissed. He stated that he did not report this incident on his security questionnaire because the case was dismissed. (Item 4 at 10-11.)

1.d. Applicant admitted that he was arrested in August 2019 and charged with DUI. He was arrested after attending his own retirement party. In February 2020 he was convicted. He spent two days in jail, paid a fine, his driver's license was suspended for 90 days, and he was placed on one year's unsupervised probation. Applicant stated that he did report this arrest to his Federal civilian employer as required. He did not report it on his security questionnaire since he did self-report it, and he believed the Government should know about it. (Item 4 at 9-10.)

1.e. Applicant admitted that he was arrested in July 2020 for Harassment and Simple Assault. The charges were in regard to two fights between Applicant and his wife. According to Applicant all the charges were eventually dismissed by the court with no findings. (Item 4 at 8-9.)

1.f. Applicant admitted that he was arrested in August 2020 and charged with Public Intoxication. He was issued a citation, and immediately paid the \$300 fine. (Item 4 at 7-8.)

1.g. Applicant admitted that he was arrested in April 2021 and charged with DUI. He was found guilty and ordered to perform community service and attend alcohol treatment. Attached to his Answer is documentation from the treatment center showing that he had successfully completed a 30-hour outpatient program on August 17, 2021. (Item 1 at 7-9; Item 4 at 17-18.)

There is no documentation from any court or law enforcement agency in the record to support Applicant's statements regarding the disposition of any of these offenses.

Paragraph 2 (Guideline G, Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he consumes intoxicants to excess. Applicant admitted this allegation.

Applicant had previously admitted to the facts of the four alcohol-related arrests described under subparagraphs 1.a, 1.d, 1.f, and 1.g. He stated in his responses to Interrogatories that he stopped drinking in April 2021 after his last DUI arrest. As noted above, he has successfully completed a drug and alcohol education and treatment program. (Item 1 at 7-9; Item 4 at 17-18.)

Paragraph 3 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has falsified material facts during the clearance screening process. Applicant admitted both allegations under this paragraph with explanations.

Applicant submitted an e-QIP on May 29, 2020. (Item 3.) Section 22 of that questionnaire concerns Applicant's Police Record. As a preliminary matter it states, "For this section report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed."

3.a. One subpart of that section asked Applicant to set forth criminal conduct within seven years of the date of the questionnaire. The question asked specifically whether he had received a summons, citation, or ticket. It also asked whether he had been charged, convicted, or sentenced of a crime. Applicant answered, "No." This was a false answer to relevant questions about Applicant's criminal history. Applicant stated in his Answer, "I admit, but thought question was asking for unreported arrests." (Item 1 at 5.)

3.b. A second subpart of Section 22 asked Applicant, in part, "Have you **EVER** been convicted of an offense involving domestic violence or a crime of violence (such as battery or assault) against your . . . cohabitant, spouse or legally recognized civil union domestic partner" and, "Have you **EVER** been charged with any offense involving alcohol or drugs?" (All emphasis in original.) Applicant answered, "No." This was also a false answer to relevant questions concerning Applicant's criminal history. Applicant stated in his Answer, "I admit, but thought this was asking for any unreported. Everything was reported to my supervisor at time of arrest." (Item 1 at 5.)

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline J, Criminal Conduct)

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

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 two conditions that could raise security concerns and may be disqualifying in this case:

(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 had a history of criminal conduct between 2011 and 2021. Both of the above disqualifying conditions have application in this case.

The guideline includes four conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's alleged criminal conduct. Two have possible application to the facts of this case:

(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 last arrest occurred in April 2021, a little over a year ago. Applicant submitted no evidence concerning his performance on the job or constructive community involvement. There is a paucity of evidence from which to find that Applicant has met

either of the mitigating conditions with regard to his history of criminal conduct. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline G, Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 one condition that could raise security concerns and may be disqualifying in this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Applicant has had four alcohol-related arrests, including three for Driving Under the Influence of alcohol, between 2011 and 2021. The above disqualifying condition applies to this case.

The guideline includes four conditions in AG ¶ 23 that could mitigate the security concerns arising from Applicant's alcohol consumption:

(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 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 demonstrated a clear and established

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

Applicant stated that he stopped drinking after his April 2021 DUI arrest. He also submitted evidence that he had successfully completed an outpatient alcohol-treatment program. Given his history of alcohol-related incidents, a year of sobriety is insufficient to show that he has mitigated the security significance of his alcohol history. Paragraph 2 is found against Applicant.

Paragraph 3 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise security concerns and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsified his latest security clearance questionnaire in answering questions about his criminal history. The above disqualifying condition has application to this case.

The guideline includes two conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's alleged falsification:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant seems to be making two arguments. One, he states that he told his supervisors about his arrests, therefore he did not need to disclose them because the Government already knew about them. Second, he argued that he did not have to disclose them because the charges were dismissed or dropped. Neither argument has merit. Section 22 is clear and unambiguous. As a preliminary matter it states that all relevant criminal actions must be set forth, whether they were dismissed or not. Secondly, there is no exception to the rule because the person has allegedly told their superior. Applicant had a more than 20-year history as a civilian employee for one of the military services. He knew or should have known about his disclosure obligations. No mitigation is shown. Paragraph 3 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding his criminal conduct, personal conduct, and alcohol abuse. He has not minimized the potential for pressure, coercion, or duress. He has also not shown that there is little likelihood of recurrence. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3: Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge