



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



In the matter of:)	
)	
)	ISCR Case No. 21-01018
)	
Applicant for Security Clearance)	

Appearances

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

11/08/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline G, alcohol consumption. Eligibility for access to classified information is granted.

Statement of the Case

On August 20, 2021, the Department of Defense (DOD) 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 September 4, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 15, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 30, 2022, scheduling the hearing for October 12, 2022. I convened the hearing as

scheduled. The Government offered exhibits (GE) 1 through 8. Applicant objected to GE 5. His objection was overruled and GE 1 through 8 were admitted into evidence. Applicant testified and did not offer any documents. The record was held open until October 19, 2022, to permit Applicant to submit documents. He timely submitted documents that were marked Applicant Exhibits (AE) A through M. There were no objections and the exhibits were admitted into evidence. DOHA received the hearing transcript on October 21, 2022.

Procedural Matters

The Government moved to amend the SOR by withdrawing ¶ 1.b. There was no objection and the motion was granted.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.e and 1.g. He denied the allegations in SOR ¶ 1.d, 1.f and 1.h. His admissions are incorporated 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 62 years old and a high school graduate. He married in 1981 and has two adult children. He has worked for federal contractors since 2007. (Transcript (Tr.) 21-22)

Applicant admitted that he drank alcohol at times to excess beginning in the 1980s. On November 12, 1996, he began abstaining from alcohol consumption, went back to church, and participated in Alcoholics Anonymous (AA). He admitted he relapsed twice, once in 2015 and again in 2018 (SOR ¶ 1.a). The first relapse was initially reported as 2016, but it was 2015. (Tr. 23-24, 26, 74)

In September 2018, Applicant was interviewed by a government investigator. He disclosed that in 1996, he believed he was consuming too much alcohol. He was having drinks with his friends after work, which turned into a daily occurrence. His wife did not approve and it had a negative impact on his family. He confided in his supervisor who assisted him in entering an inpatient alcohol treatment program. He was hospitalized for three days, was treated for alcohol use disorder, and upon his release, he began attending AA and church, which he found helpful in maintaining his sobriety (SOR ¶ 1.c). He testified that he did not consume alcohol until he relapsed in 2015. (Tr. 33, 48-50; GE 8)

Applicant told the investigator that in November 2015, while on a work trip he and his coworkers had Sunday off. They went to church and later to the beach. Applicant was offered a drink from a bottle of alcohol that was being passed around. He said he took a swig and that was the first drink he had since 1996. He then went swimming, slipped, and hit his head. He did not believe he was intoxicated or that alcohol contributed to him falling, but when he was treated for his head injury, the doctor smelled alcohol. He told the doctor about his history of sobriety and AA. The doctor decided to send him home

early due to the limited amount of medical care available in the remote location where they were. Applicant said he reported the incident to his supervisor upon his return. He testified that he did consume alcohol at that time, but did not drink to excess. He told the doctor he was active in AA and believed that information along with his head injury, which he described as minor, is why the doctor sent him home. He stated that in 2015, he was attending AA daily because he was helping a person from church with his sobriety, so he attended with him. He said this was the first drink he had since 1996. SOR ¶ 1.d alleges the incident occurred in January 2016 and Applicant said it occurred in 2016. The actual incident took place in 2015 and his treatment occurred in January 2016. (Tr. 27-30, 50-52; GE 8)

Applicant told the investigator that due to concerns by his employer about his alcohol use, he voluntarily submitted to an alcohol evaluation with his employee assistance program. From January 2016 to March 2016, he participated in three counseling sessions at BA, a treatment center. A letter from his counselor stated that Applicant had been sober for 18 years and attended AA. He had an excellent understanding of addiction and there was no need for further counseling. No disciplinary action was taken nor were there any security concerns noted. Applicant testified essentially to the same facts at his hearing. (SOR ¶ 1.d) (Tr. 34-37, 52-55; GE 3, 8)

Applicant told the investigator that in March 2018 he had minor surgery on his leg and arm and was not prescribed any pain medication. He was driving home from the surgery center, was in pain, and was anxious about being off work. He impulsively purchased two airplane-size bottles of alcohol that were each about two ounces. He drank the bottles. He then proceeded to drive home and clipped the mirror on a truck with the mirror on his car. He did not purchase over-the-counter pain medication because he was going to go home and sleep and thought the alcohol was the easiest way to sleep. At the time, he did not realize he had clipped the mirror until the driver of the truck pursued him and Applicant pulled his car over. The driver called the police. The police detected alcohol on Applicant. He failed a field sobriety test and was arrested for driving under the influence of alcohol (DUI). Applicant testified that he passed the field sobriety test, except for walking in a straight line, which he had difficulty due to the surgery on his leg and pain associated with it. A breathalyzer test was conducted and it recorded .13% and a second test recorded .11%. Applicant disputed the results due to the amount of alcohol he said he had consumed. He was also charged with leaving the scene of an accident with damage to property and careless driving, misdemeanors. (SOR ¶ 1.e) (Tr. 30-33, 37, 57-61; GE 8)

Applicant testified essentially to the same facts. He acknowledged he used bad judgment. He explained he was not swerving, but the truck had extended trailer mirrors that were lightly fastened to the truck. He further explained that the breathalyzer was not working correctly at the time. Two men were trying to fix the breathalyzer while he was at the police station. He waited about four or five hours for them to fix it before the test was administered. He did not agree with the results because based on what he said he had to drink, the reading was too high. The DUI charge was reduced to reckless driving and the other charges were dismissed. Applicant pleaded guilty to the reduced charge and

the court withheld adjudication based on Applicant's compliance with the court orders. He paid the associated fine, completed community service, and completed the other requirements. (Tr. 30-33, 37-38, 77-79; GE 6)

After Applicant's arrest, he was required to report to his state's safety council, which recommended he participate in alcohol counseling, which he did from April 2018 to June 2018, attending 15 sessions. He disputes the information on the intake questionnaire that is part of the packet from the counseling center, BA. (GE 4)

SOR ¶ 1.f alleges that in April 2018, Applicant provided misleading statements to a mental health professional (MHP) evaluating his alcohol use. The allegation states "You stated you drank 'two airplane bottles of liquor' before your DUI arrest in March 2018; when in truth, it was determined you drank five full alcoholic beverages prior to your arrest." Applicant has consistently stated he drank two airplane bottles of alcohol. He credibly testified that he told the MHP that he drank two airplane bottles of alcohol. He explained that the MHP completed the questionnaire, not him. The form is not in Applicant's handwriting, but is typewritten. He disputed what she put on the form. He credibly testified that she told him that it did not matter what was on the form, he was going to therapy. He said he answered "no" to questions that she checked "yes". The form asks "Type/amount consumed/used" and in the space provided in typed words, it states "verbal: 2-2 ounce bottles. Written 2 airplane bottles." Under the section which asked, "If breath test refused, why?" [she] typed in "BAC .113/.108=5 drinks at time of testing." He testified that one question asked how often he would drink to have fun and the answer on the form said almost all of the time. He testified that he would never have said that. Another question asked how many days a week he consumed alcohol and the answer said seven. He said this was false. There were numerous other questions that Applicant said the answers were not his. I believe him. (Tr. 38-43, 60-62; GE 4 pages 42-62)

Many of the questions used the word "ever." Applicant clearly stated that he had an alcohol problem prior to 1996 and he relapsed once in 2016 and 2018, when he was arrested for DUI. He disputed many of the answers on the questionnaire as misleading by indicating that he had a current problem and was regularly drinking alcohol, which he stated he was not. He testified that other than these two relapses, he has not consumed alcohol and did not consume it after his 2018 arrest. I believe there may be confusion in the questionnaire in that Applicant was responding to questions about his entire alcohol history and not about his recent relapse and use of alcohol. The document does note that Applicant refers to his relapse in 2016 and his second relapse in 2018. This also appears to be the issue when Applicant was responding to government interrogatories. He was referring to his alcohol use prior to 1996. He testified that he only consumed alcohol twice after 1996. (Tr. 38-43, 66-72; GE 2, 4)

Applicant participated in the BA outpatient treatment from April 2018 to June 2018 and was diagnosed by a qualified mental health professional with alcohol use disorder, relapse. He completed the program with a final diagnosis of alcohol use disorder, in early remission. His prognosis was good. The MHP recommended he continue to participate in AA. (Tr. 43-44; GE 4)

In February 2021, Applicant was evaluated by a government-approved duly qualified mental health professional (GMHP). She determined Applicant was not forthcoming with information, was inconsistent with his responses, and therefore he was either untruthful or in denial of his alcohol use disorder condition. She determined that Applicant was at high risk for relapse, and there were significant concerns about his reliability, judgment, and trustworthiness, and his prognosis was poor. (Tr. 44; GE 7)

Applicant disputed the GMHP findings and stated that he was frustrated with her because she did not seem familiar with the steps of the AA program and seemed to disregard his active participation in AA as significant. He believed she was more of a science person than a spiritual person. Applicant explained that he is active in his church and has been a deacon for 17 years. He took his time answering the GMHP's questions, which she characterized as responses as being elusive, but he said he was being cautious and thoughtful, realizing his answers were important. He believed she interpreted that as not being forthright. The GMHP did not agree with his use of his church and AA for help with his alcoholism and abstinence. His spiritual participation with his church and with AA is what he practices. She did not agree with him regarding step two of AA that is accepting a power greater than oneself and step three to turn over one's decisions to God. He felt there was tension with her because she did not agree with him that AA has kept him from consuming alcohol. He admitted that during the past 26 years of sobriety he has had two relapses in 2015 and 2018. He was surprised by the GMHP's responses to his commitment to AA. I found Applicant's testimony credible. (Tr. 44-46; GE 7)

Applicant testified that he has had two relapses since 1996, once in 2015 and another in 2018, as noted above. He has participated in AA since 1996. He believes he has taken responsibility for his actions. Applicant attends two AA meetings a week. He had a sponsor, who passed away about nine years ago. He has an accountability partner who he is in contact with every day. They inquire on how they are doing and they share devotionals. He continues to participate in the AA 12-step program. He is an active member of the musical group in his church. He believes he is a recovering alcoholic and will be forever. (Tr. 62-64, 75)

Applicant read a character letter from his wife. She stated that they were brought up in very strict Christian homes that did not allow smoking, drinking, dancing, or going to movies. She believes because of their background that any alcohol consumption was considered heavy and that this is why Applicant has referred in the past to his heavy use of alcohol. She stated that Applicant abstained from alcohol consumption in the 1990s, began attending AA, and the family went back to church. He has been a deacon in the church for 17 years, taught Sunday school, and was in charge of counting and depositing the church's offerings. He plays in the band at church every Sunday. He shares his faith "even to people, sometimes therapists, who aren't receptive." She acknowledges he made a reckless mistake in 2018 when he used alcohol. He took responsibility for his actions. He is a great husband, father, and friend who is trusted by his bosses. (Tr. 24-25; AE A)

Applicant provided character letters from friends and coworkers. He is described as dependable, trustworthy, and upbeat. His supervisor described him as a positive person whose skills are “top notch.” He is valued and appreciated by his coworkers. Applicant also provided copies of awards photographs of his work. (AE B-M)

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 impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

(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.

There is sufficient evidence to support that Applicant is a recovering alcoholic and consumed alcohol from the 1980s until 1996 and again in 2015 and 2018. He participated in an inpatient treatment program in 1996 and was treated for alcohol use disorder. He relapsed in 2015 and 2018, when he drank alcohol. He was to remain abstinent. In 2015, he drank alcohol on a Sunday, his day off, while he was on a work trip. He was arrested in 2018 for DUI, after consuming alcohol. He was also charged with careless driving, and leaving the scene of an accident with property damage. In 2018, he was diagnosed with alcohol use disorder, in early remission. In February 2021, he was evaluated by a duly qualified mental health professional and diagnosed with alcohol use disorder, moderate. She determined Applicant was at high risk for relapse and had significant concerns about

his reliability, trustworthiness and judgment. His prognosis was poor. AG ¶¶ 22(a), 22(b), 22(d), 22(e), and 22(f) apply.

I found there was insufficient evidence to conclude Applicant provided misleading statements to the MHP evaluating his alcohol use. SOR ¶ 1.f was alleged under the alcohol consumption guideline. None of the disqualifying conditions apply under this guideline. The factual allegation would have been appropriately alleged under Guideline E, personal conduct, but was not. Even if it was correctly alleged, I believe Applicant when he stated that the MHP wrote her answers to the questions and not his. Many questions use the word “ever” which could cause confusion, and I believe it did in this case. Applicant has consistently stated to the MHP and in his testimony that he drank two airplane-bottle-size alcohol drinks. It is unclear the number of ounces in each bottle, but if there were two or more that could account for the level on the breathalyzer. The MHP wrote down five drinks based on the breathalyzer results. This does not equate to Applicant intentionally misleading the MHP.

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 admits he is a recovering alcoholic and will be for the rest of his life. He was abstinent from 1996 until 2015 when he consumed alcohol. He consumed alcohol again in 2018 and was arrested for DUI. He has acknowledged these significant failures. He has been sober since his March 2018 DUI arrest, more than four years. He was diagnosed with alcohol use disorder, moderate. AA is a recognized and respected program for those with alcohol issues and is recommended by most treatment programs. Applicant has participated in AA since 1996. He currently attends AA twice a week. He is

involved in his church. He has the support of his family. He meets with a partner daily for devotionals. He understands the difficulty of remaining sober, and although he has failed twice, his commitment is evident by his abstinence and working the AA program. He readily acknowledged his alcohol history and provided evidence to overcome his problem. He believed that his commitment for seeking help from a higher power was not fully recognized and dismissed by the GMHP. All of the above mitigating conditions apply.

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.

Applicant is a recovering alcoholic. Being an alcoholic does not prevent someone from holding a security clearance. He recognized his struggles with alcohol and abstained for many years until he relapsed twice. He has not ignored his problems, but has been actively addressing them. I believe he is committed to his sobriety. Applicant has met his burden of persuasion. The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Subparagraph 1.c-1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge