



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



In the matter of:)	
)	
)	ISCR Case No. 21-01363
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

11/09/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the alcohol consumption security concerns. He did not mitigate the criminal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 22, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, alcohol consumption, and Guideline J, criminal conduct. Applicant responded to the SOR on November 11, 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 July 18, 2022.

The hearing was convened as scheduled on October 5, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. During the hearing, on my motion, I amended the SOR in order to have it conform to the evidence by changing the state where one of Applicant's arrests took place. At Applicant's request, I left the record open for the parties to provide additional documents. Applicant

provided post-hearing documents that were admitted in evidence without objection as Applicant's Exhibits (AE) A-C. I received a transcript (Tr.) of the hearing on October 12, 2022.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since December 2019. He attended a trade school from 2010 until 2011 and earned a trade certificate. He has never been married and has no children. (Tr. 21; GE 1, 2)

In about August 2006, Applicant was charged with driving under the influence of alcohol (DUI) in State A. He had been drinking mixed drinks at a party and was impaired. He claimed that he gave his keys to another individual in order to drive him home, but that person was also impaired. Whoever was driving Applicant's car hit a telephone pole and police arrived on the scene. Applicant claimed that the driver fled the scene and he was in the passenger seat. He told police he had not been driving. He claimed that, despite the fact that he had not been driving, police arrested him for DUI because his car had been involved in the accident and he had a blood alcohol content (BAC) over the legal limit. He was convicted of DUI. Based upon the self-serving nature of his story and his arrest and conviction, I find Applicant's claim that he was not driving his car strains credulity. He was driving under the influence of alcohol during this incident. His driver's license was suspended for nine months and he was placed on probation. He was also required to attend court-ordered alcohol-related classes and he had to pay \$1,600 in fines. He claimed that he has satisfied all the requirements of this DUI conviction. He went to Alcoholics Anonymous (AA) meetings for about a year after this arrest. However, he drank alcohol during the time period he was attending these meetings. (Tr. 18, 23, 25, 33, 37-38, 52; Answer; GE 1-3)

In about July 2010, Applicant was charged with DUI in State A. He was pulled over after driving home from a concert where he had been drinking beer. He claimed that he had only had four beers over a five-hour period. He was given a breathalyzer test, resulting in a .08 BAC. He was arrested and spent the night in jail. He pleaded guilty and was convicted of DUI. As a result of his conviction, he was fined and ordered to take 18 months of weekly DUI instructional classes. He attended these classes until about 2011, but transportation issues and scheduling conflicts resulted in his failing to complete the courses. He was also ordered to install an ignition interlock device on his vehicle, which he failed to do. Applicant lost his job as a driver as a result of this DUI. As of the date of the hearing, he still had not complied with the terms of his sentence as he has yet to complete the DUI instructional courses or install an ignition interlock system on his car. He claimed that he has not completed these requirements because of the time and money it would cost him. He also acknowledged missing these classes because he was being foolish. (Tr. 19, 23, 26-27, 33-34, 37-43, 46-49, 56; Answer; GE 1-3)

Applicant was arrested in about April 2011 for failure to appear and for failing to complete the requirements of his 2010 DUI conviction. As a result of his failure to

complete the terms of his 2010 DUI conviction, his driver's license was suspended. He was arrested again in December 2012 on the same charges as the April 2011 arrest. (Tr. 34-42; Answer; GE 1-3)

Despite knowing that he was not permitted to drive because his driver's license was suspended, Applicant drove his vehicle to and from work nearly every day from 2011 until 2018. In about December 2018, while driving to attend a job interview, he was pulled over by a police officer in State B for following another vehicle too closely. When the police officer determined the suspended status of Applicant's driver's license, he was arrested and charged with driving on a suspended license and driving without an ignition interlock device. He was convicted of both of these charges. Applicant knew that he was not supposed to be driving, but he did so, regardless. His vehicle was impounded and he was fined. He paid the fines through a payment arrangement in about 2020. (Tr. 29-31, 42-45, 51; Answer; GE 1-3; AE B)

In about 2019, Applicant moved to State C for a new job. He obtained a valid driver's license in State C through their application process that involved a "Termination Action" of his State A driver's license suspension. Despite arguably not being eligible for the Termination Action in State A pursuant to the language in its own forms (ineligible if individual has not complied with an ignition interlock requirement), Applicant was granted his request for a Termination Action in State A and obtained a driver's license in State C. He is not permitted to drive in State A because he has not complied with (at least) the ignition interlock portion of his 2010 DUI conviction. He claimed that he has not driven on a suspended license after his 2018 charge in State B. He also claimed that he has not consumed alcohol and driven after his 2010 DUI arrest. (Tr. 44-51; Answer; AE A)

Applicant claimed that he has steadily cut back on his drinking after his 2010 DUI arrest and conviction. He was drinking about a six-pack of beer every day prior to his 2010 DUI. In 2020, he claimed that he was drinking a 12-pack of beer two weekends per month. During the hearing, he testified that, after he obtained his driver's license in State C in 2020, he only drinks one or two beers at a sitting. However, he also testified that he drank four beers at a sitting about three weeks before the hearing. He claimed that he no longer drinks to the point of intoxication. However, he testified that he was last intoxicated in December 2021 after drinking 11 beers at one sitting while visiting his family in State A. He acknowledged that, at some point in the past, he had a problem with alcohol and considered himself to be an alcoholic, but he has never been diagnosed by a qualified professional as having an alcohol use disorder. He claimed that he has never tried to abstain from alcohol completely, but may when he is married and has children. (Tr. 23-28, 52-56)

Applicant provided a character-reference letter from his facility security officer (FSO) praising Applicant for his honesty, hard work, and responsibility. His FSO claimed that he believed that Applicant has learned from his mistakes and should be entrusted with a security clearance. (AE C)

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

The security concern for alcohol consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable 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; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant was charged with and convicted of DUI in 2006 and 2010. Applicant failed to comply with his court-ordered alcohol education classes from his 2010 DUI conviction. These facts render the foregoing disqualifying conditions applicable and shift the burden to Applicant to mitigate those concerns.

Conditions that could mitigate alcohol consumption security concerns are provided 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.

Applicant has not been charged with an alcohol-related offense in 12 years. There is no evidence that he has driven a vehicle while impaired during this time. He understood that he had a problem with alcohol and modified his consumption by gradually drinking less and less often over the years. He went from drinking a six-pack every day to only drinking a few beers per month. Based on these considerations, I find

that AG ¶ 23(a) and AG ¶ 23(b) are applicable. Applicant has mitigated the alcohol consumption security concerns.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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 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;
- (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; and
- (c) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant engaged in criminal behavior in 2006 and 2010 by driving while impaired by alcohol. He also engaged in criminal behavior by driving while his driver's license was suspended from 2011-2018. He failed to comply with the requirements of his 2010 DUI conviction by not attending court-mandated classes and not installing an ignition-interlock device on his car. These facts render the foregoing disqualifying conditions applicable and shift the burden to Applicant to mitigate those concerns.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (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 has not been charged with a crime after 2018. However, as he has not taken the required alcohol-related classes or installed an ignition interlock system on his car, he still has not complied with the sentencing requirements of his 2010 DUI conviction. This continued lack of compliance precludes him from mitigating his criminal behavior through the passage of time without recurrence or by showing successful rehabilitation. His continued non-compliance casts doubt on his reliability, trustworthiness, and good judgment.

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 have incorporated my comments under Guidelines G and J in my whole-person analysis. I have also considered Applicant's positive character reference.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the alcohol consumption security concerns, but did not mitigate the 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.d:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge