



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-00817
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2022

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, alcohol consumption and Guideline J, criminal conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On October 15, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption and Guideline J, criminal conduct. The DCSA CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on May 27, 2021, and she also requested a hearing. The case was assigned to me on May 4, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 13, 2022, and the hearing was held as scheduled on June 14, 2022. The Government offered exhibits (GE) 1-5, which were admitted into evidence without objection. [Note: At hearing Applicant stated she did not have GE 3-5 available to her. I withheld admitting those exhibits until Department Counsel sent them again to Applicant post-hearing. She had a chance to review them and posted no objections. (See Hearing Exhibit (HE) IV). Additionally, HE III shows that Department Counsel sent Applicant all the proposed GE before the scheduled hearing and Applicant acknowledged receipt of the same.] The Government's exhibit list and discovery letter were marked as HE I and II. Applicant testified, but did not offer any documents at the hearing. Post-hearing, she submitted an email that was admitted without objection as AE A. DOHA received the hearing transcript (Tr.) on June 22, 2022.

### **Procedural Issue**

Department Counsel moved to withdraw SOR allegation ¶ 1.d. Applicant did not oppose the motion and it was granted. My formal findings will reflect that the allegation was withdrawn.

### **Findings of Fact**

In Applicant's answers, she admitted all the allegations in the SOR with some explanation. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 57 years old. She recently married in March 2022, for the second time. She has three adult children from her first marriage. He has worked for her current defense contractor-employer since 2011. She is a high school graduate. (Tr. 6, 23-27; GE 1)

The SOR alleged Applicant was charged with driving while intoxicated (DWI) on three occasions: February 2018, February 2014, and December 2004. (SOR ¶¶ 1.a-1.c) Her DWI arrests were also alleged as criminal conduct under Guideline J in the SOR. (SOR ¶ 2.a)

Applicant completed her 2018 security clearance in January 2018. Her February 2018 DWI charge occurred after she spent the evening at a girlfriend's house and consumed "quite a few" glasses of wine. Several circumstances were going on in her life at the time that caused her emotional strain. Her mother had recently passed away and she and her then-boyfriend (current husband) were caring for his dementia-stricken mother. She testified that she "just got drunk" that evening. She decided to drive home from the friend's house and she was stopped by law enforcement. Court records indicate that her blood alcohol content (BAC) was .15, almost twice the legal limit of .08.

She was arrested and spent the night in jail. She ultimately pleaded guilty and received a sentence that included probation, installation of an interlock device on her car, and required attendance at an alcohol counseling course. The course required three-times-a-week attendance, but she could not recall the duration of it. She also attended Alcoholics Anonymous (AA) during this time. The record is unclear if her AA attendance was mandated by the court. She was given the opportunity post-hearing to provide documentation about her counseling, which she claimed to have, but she failed to do so. (Tr. 27-28, 30-36; GE 3, 5)

Applicant's February 2014 DWI charge occurred after she spent the evening at a friend's house and claimed she drank two beers before driving home. She was stopped by law enforcement for having a non-operable license-plate light. She performed field sobriety tests but refused breath and blood testing. She was charged with DWI. The final disposition was a reduction of the charge to obstruction of a highway. Her sentence included 14 months of community service and a fine. (Tr. 43-45; GE 3-4)

Applicant's July 2004 DWI charge occurred when she decided to drive from her home to get some food after she had been drinking alcohol. It was raining during her drive and she lost control of her car when rounding a corner. She was alone in the car. Applicant does not recall the details of what happened next after the accident. She was hospitalized and treated. Later, she became aware that she was charged with DWI. The charge was ultimately dismissed, but the record does not explain why. In her security clearance applications, she indicated she sought alcohol treatment or counseling for one month in 2004. She provided no further details about this counseling. (GE 1-4)

Applicant testified that she continues to drink alcohol to include drinking to intoxication four to six times a month. She claimed she last drank to intoxication in December 2021. She also claimed that she no longer drives after drinking alcohol and she has not done so since her 2018 arrest. She believes that she is an alcoholic, but she also believes she does not have a current alcohol problem. She last attended AA over a year ago. She has not attended any other alcohol treatment or counseling program since her court-ordered counseling after her 2018 arrest. She realizes she made mistakes and she is sorry for them. (Tr. 37-41, 47)

### **Policies**

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 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concern pertaining to 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. 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 whether the individual is diagnosed with alcohol use disorder; and

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

Applicant's three DWIs in 14 years support the application of the above disqualifying conditions.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

(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 established a pattern of modified consumption or abstinence in accordance with treatment recommendations; 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's last adverse alcohol incident occurred in February 2018. While a considerable amount of time has passed, her continued pattern of abusing alcohol minimizes that passage of time. Her alcohol-related incidents have not been infrequent, since she has been charged three times since 2004. She was arrested for her third DWI shortly after completing her January 2018 SCA. She continues to drink alcohol, even to the point of intoxication, several times a month. She has not availed herself of any counseling or treatment beyond a vague reference to a one-month attendance in 2004 (without any details) and her court-ordered counseling from her 2018 DWI conviction. The record evidence does not support a finding that Applicant has modified her consumption of alcohol in a significant way. Based upon her long pattern of alcohol abuse and continued use of alcohol, I cannot conclude that an alcohol-related incident will not recur in the future. Her actions cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions apply.

## Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

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 in this case. 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; 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 person was formally charged, formally prosecuted or convicted.

Applicant's three DWIs constitute a pattern of criminal conduct. I find that both disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(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 criminal incident occurred in March 2018. Her criminal acts have not been infrequent having been arrested on DWI charges three times since 2004. She continues to drink alcohol to the point of intoxication several times a month. I cannot conclude that additional crimes are not likely to recur in the future. Her repeated criminal behavior and apparent unwillingness to change her drinking patterns cast doubt on her current reliability, trustworthiness, and good judgment, and it also shows a lack of successful rehabilitation. AG ¶¶ 32(a) and 32(d) do not 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 considered Applicant's contractor service, her expression of remorse, and her family circumstances at the time of her 2018 arrest. However, I also considered that she has not reformed her alcohol misuse leading to criminal DWI charges. Applicant failed to provide sufficient evidence to mitigate the alcohol consumption and criminal conduct security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines G and J.

## 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.c:	Against Applicant
Subparagraph 1.d:	Withdrawn
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge