



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



In the matter of:)	
)	
)	ISCR Case No. 21-02005
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
 For Applicant: *Pro se*
 12/15/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the alcohol consumption, criminal conduct, and personal conduct security concerns. Not enough time has elapsed since he engaged in alcohol-related criminal behavior to show that future misconduct is unlikely to recur. National security eligibility is denied.

Statement of the Case

On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption), J (criminal conduct), and E (personal conduct). The CAF took action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

On January 14, 2022, Applicant responded to the SOR (Answer). He admitted all of the SOR allegations. He requested a determination on the written record, in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

On June 29, 2022, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Items 1 through 13. In the FORM, Department Counsel provided notice that Applicant had 30 days from the receipt of the FORM in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. The notice added that Applicant's lack of response may be considered as a waiver of any objections, and that the Administrative Judge would make a determination based solely on information included in the Government's FORM.

On August 3, 2022, Applicant received the FORM and its attachments. He did not submit a response to the FORM within 30 days of receipt, and he did not raise any objections to the authenticity or admissibility of Items 1 through 13. I was assigned this case on September 29, 2022. Items 1 through 13 are admitted into evidence without objection.

Findings of Fact

Applicant is 57 years old. From 1985 through 1988, he served honorably in the United States Air Force. He has been married and divorced twice, most recently divorced in 2007. He has three adult sons. Since June 2015, he has worked for a government contractor as an aircraft supervisor. (Item 2)

The SOR alleges that Applicant has been arrested and charged with driving under the influence (DUI) five times, prior to December 2019, and one alcohol-related disorderly conduct violation. All of his alcohol-related misconduct was cross-alleged under Guideline J, and an additional 1998 charge of obtaining a hunting license under false pretenses was also alleged. All of his alcohol-related and criminal conduct SOR allegations were cross-alleged under Guideline E.

Applicant admitted the December 2019 arrest, in which he was charged with Extreme DUI and had a blood alcohol content (BAC) above .20%. (SOR ¶1.a) He admitted a June 2015 DUI charge with a BAC between .12 and .15%. (SOR ¶ 1.b) He stated both of these incidents occurred after he had been golfing with friends and drinking alcohol. He generally consumes between eight and twelve beers during each golf outing. He pleaded guilty to the 2015 DUI, and he was ordered by the court to complete three months of counseling, fined approximately \$2,000, and required to install an interlock device on his vehicle for one year. He also pleaded guilty to the December 2019 DUI charge, and the court sentenced him to serve two days in jail, 22 days of work release, and 96 hours of home detention. He completed alcohol screening, attended DUI classes, and he paid a fine of approximately \$3,700. (SOR Answer, GE 3, GE 4)

Applicant admitted the following alcohol-related offenses as follows:

(SOR ¶ 1.c) March 1999 DUI;

(SOR ¶ 1.d) February 1995 Disorderly Intoxication, Public Place, Cause Disturbance;

(SOR ¶ 1.e) July 1991 DUI; and

(SOR ¶ 1.f) December 1990 DUI. (SOR Answer; GE 2-GE 13)

During a background interview in July 2019, Applicant discussed in detail his alcohol-related charges with an authorized government investigator. He also described his general pattern of drinking as consuming four to eight beers at home on the weekends. When questioned about the likelihood that he would consume alcohol to the point where he once again faced adverse consequences, Applicant's reply was that it would never happen. He stated that he made a conscious decision to not consume alcohol to excess in the future. In the event he was out drinking socially, he would use the services of a ride-share service to prevent another DUI. Five months after this interview, Applicant was arrested in December 2019 for DUI with a blood alcohol content above .20%. (GE 4)

Applicant admitted that he had consumed alcohol, at times to excess, from about December 1990 to at least December 2019. In April 2021, he was diagnosed by a treating physician as having an alcohol use disorder. (SOR ¶¶ 1.g and 1.h)

During his November 2020 background interview, Applicant stated that drinking alcohol makes him happy. Since his last arrest for DUI in December 2019, he decided he would abstain completely from using alcohol. In November 2021, he certified that the details reported during his attached background interviews were accurate and true. (SOR Answer; GE 4)

(SOR ¶ 2.b) Applicant admitted that he was found guilty of obtaining a hunting license under false pretenses in December 1998. (SOR Answer)

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 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 describes the security concern about 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.”

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;

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

(d) diagnosis by a duly qualified medical or mental health professional (e.g. physician, clinical psychologist, psychiatrist, licensed clinical social worker) of alcohol use disorder.

The record evidence establishes AG ¶¶ 22(a), (c), and (d). Applicant was involved in six alcohol-related arrests in 1990, 1991, 1995, 1999, 2015, and 2019. During his most recent arrest, his BAC recording was extremely high, registering over 0.20% indicative of a binge consumption of alcohol. In April 2021, he was diagnosed with an alcohol use disorder by a qualified medical or mental health professional.

AG ¶ 23 lists four conditions that could mitigate security concerns:

(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

To his credit, Applicant candidly admitted in his SOR Answer his involvement in the six alcohol-related incidents, and he acknowledged his 2021 diagnosis of alcohol use disorder. His long track record of repeated criminal and alcohol-related offenses demonstrates extremely poor judgment and an inability to control impulses. It is clear that he did not learn from his past mistakes. When interviewed in July 2019, Applicant told the investigator that there was no chance of him ever facing adverse consequences in the future due to his excessive use of alcohol. He was arrested for DUI with an extremely high BAC five months following this background interview.

There is insufficient information in the record to demonstrate Applicant's claim that he has successfully abstained from using alcohol since his most recent DUI arrest in December 2019. There is no information about his alcohol treatment following his 2021 diagnosis of alcohol use disorder, details of his rehabilitation, or even a future favorable prognosis. Due to the severity of Applicant's alcohol abuse history, I believe more time is

needed to establish successful rehabilitation. Applicant failed to mitigate the alcohol consumption security concerns.

Guideline J: Criminal Conduct

The security concern related to the criminal conduct guideline 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 lists conditions that could raise a security concern and may be disqualifying. One potentially applies:

(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.

The record evidence establishes AG ¶ 31(a). Applicant was involved in six alcohol-related arrests from 1990 through 2019, and in 1998, he was found guilty of obtaining a hunting license under false pretenses.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

(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 criminal conduct is disconcerting. His long pattern of criminal violations demonstrates that he holds himself above the law. There is insufficient evidence in the record concerning his successful rehabilitation, or to demonstrate that Applicant's criminal conduct will not recur. I find that more time is needed to ensure that he does not repeat his excessive use of alcohol and engage in criminal conduct. As such, his behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to establish mitigation under the above mitigating conditions.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) personal conduct... that creates a vulnerability to exploitation, manipulation, or duress, such as

(1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

Guideline J allegation ¶ 2.b and Guideline G allegations ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, and 1.f are cross-alleged under Guideline E ¶ 3.a. Each of them is established by the record evidence. Applicant's history of alcohol abuse and seven criminal arrests support application of AG ¶¶ 16(d) and 16(e)(1).

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's claim that he has abstained from drinking alcohol since December 2019 is laudable. As stated under Guideline G, there is insufficient information in the record concerning his successful treatment and rehabilitation following an April 2021 diagnosis of alcohol use disorder. In addition, not enough time has elapsed to show that he is fully rehabilitated or that criminal conduct is unlikely to recur, which continues to cast doubt on his reliability, trustworthiness, and good judgment. The personal conduct security concerns are not mitigated.

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 have incorporated my comments under Guidelines G, J, and E and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant acknowledged his lapses in judgment due to his excessive use of alcohol and a long history of criminal and alcohol-related violations. This pattern demonstrated that he was unable to learn from his mistakes and he places his personal interests before his legal obligations and responsibilities. He also failed to provide supporting documentation concerning his alcohol counseling and treatment following a 2021 diagnosis of alcohol use disorder. I cannot determine if he has successfully completed treatment and if he has fully complied with the treatment recommendations. Given the entirety of the record evidence, I conclude that Applicant did not mitigate the alcohol consumption, criminal conduct, and personal 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge