



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



In the matter of: )  
)  
) ISCR Case No. 22-01240  
)  
Applicant for Security Clearance )

**Appearances**

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

01/31/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Guideline G, alcohol consumption, Guideline J, criminal conduct, and Guideline F, financial considerations security concerns. He mitigated the Guideline H, drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 5, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, alcohol consumption, Guideline J, criminal conduct, Guideline H, drug involvement and substance misuse, and Guideline F, financial considerations. 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 August 10, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on September 21, 2022. He was afforded an opportunity to file objections and submit material in refutation, extenuations or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 10. (Item 1 is the SOR.) Applicant did not submit a response to the FORM, file objections or submit any material or documents. Items 2-10 are admitted in evidence. The case was assigned to me on December 2, 2022.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. 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 46 years old. He earned a bachelor's degree in 2000 and a master's degree in 2005. He has been employed by a federal contractor since November 2020. He is also self-employed with his own business since August 2017. Except for a period from May 2015 to August 2017, Applicant has worked for federal contractors since 2008. He was married in 2004 and divorced in 2009. He does not have children. (Item 3)

Applicant completed a security clearance application (SCA) in June 2021. In it, he disclosed he has held a top secret security clearance since 2008. (Item 3)

SOR ¶ 1.a alleged that in February 2012, Applicant was charged with operating a vehicle while intoxicated and operating a vehicle with .10 blood alcohol content (BAC) in State A. In July 2021, Applicant was interviewed by a government investigator. He disclosed that in 2012 he was stopped by police after he had drinks at a bar. He could not recall how many. He was arrested and later went to court and pleaded guilty to the offense. He said his driver's license was suspended for some time, but could not recall for how long. He was required to pay a fine and perform community service. (Items 2, 3, 10)

Applicant disclosed in his SCA that in November 2015 he was arrested for driving under the influence (DUI) of alcohol in State B. He was at a bar with friends and consumed between four to five alcoholic beverages. He felt fine to drive. He was stopped by police and failed a breathalyzer test. He pleaded guilty to DUI. He told the government investigator that he was ordered to pay a fine, complete community service, and his license was suspended for three months. He admitted SOR ¶ 1.b that alleged he was charged with DUI in November 2015, found guilty and sentenced to five days in jail and 36 months probation. (Items 2, 3, 8, 9, 10)

In February 2017, Applicant was charged with driving when privilege suspended for prior DUI conviction in State B. In May 2017, a bench warrant was issued against him for this offense. It remains active as of the close of the record. (Items 8, 9)

In March 2017, an arrest warrant was issued from State B where Applicant was convicted of DUI in 2015, for failing to comply with the probation conditions. The warrant remains active as of the close of the record. (Items 8, 9)

In December 2017, Applicant was charged in State C with leaving the scene of a crash and driving while license revoked due to DUI. It appears he had a plea agreement and pleaded guilty or no contest to the revocation offense and received a 30-day jail sentence, which was suspended, and a fine. (Item 4)

Applicant told the government investigator that in April 2019 he was at a friend's house and consumed between four and five alcoholic beverages. He was driving home when he was in a one-car accident. According to the police report, Applicant was trapped in the vehicle and the roof had to be cut off by the fire department to extricate him from it. He was observed by the fireman on scene to be highly intoxicated. A check by the police revealed Applicant's license had been revoked for a previous DUI. The effective dates of the revocation was from July 2016 to July 2019. Applicant refused consent to submit to a blood test. The police obtained a search warrant for Applicant's blood test results. His blood alcohol level at the time of the accident was .204%. The court records reflect Applicant was charged with DUI in State C, driving while license revoked, and failure to have insurance. He was convicted of the offenses. He received 2 days' home confinement for the DUI (one day suspended), 30 days' home confinement for driving with a revoked license, and fines for all three offenses. (Items 5, 10)

Applicant told the government investigator that he does not believe he has a problem with alcohol. For his 2015 and 2019 DUI convictions, he was required to attend court-ordered alcohol awareness classes. He said he no longer drinks and drives. He is a social drinker and goes out about once a month or two months. He will consume two to three alcoholic beverages and will not drive. He has no intention of drinking and driving in the future. He said he will not drive even if he consumes one drink. (Item 10)

Applicant disclosed in his SCA that from January 2017 to March 2017 he used cocaine three or four times while at parties. He was not working as a government contractor at the time. He told the government investigator that he stopped using it because he did not like it and he did not intend to use it or any other illegal drug in the future. (Items 3, 10)

SOR ¶¶ 3.a through 3.j alleged delinquent medical accounts, credit cards, communication services, utilities, and other consumer accounts totaling approximately \$35,249. Applicant admitted them all in his SOR answer. He told the government investigator that he had some financial problems during the COVID pandemic when he did not have enough work and fell behind on his bills. When the investigator confronted him with his delinquent accounts he said he was unaware the accounts were delinquent, and he would look into them and resolve them. These collection accounts are reported in Applicant's June 2021 and February 2022 credit bureau reports. Applicant did not provide any information about actions he may have taken to pay, dispute, or resolve these accounts. (Items 2, 6, 7 10)

## 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 concern 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 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.

In 2012, Applicant was charged and convicted of operating a vehicle while intoxicated and operating a vehicle with a BAC of .10 % in State A. In 2015, he was charged and convicted of DUI in State B. In 2019, he was charged and convicted of DUI with a BAC more than .15% and driving while license revoked for DUI in State C. His BAC at the time was .204%. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating condition 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 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 has a history of alcohol-related incidents beginning in 2012. He does not believe he has a problem with alcohol, despite three DUI convictions. He was required to take an alcohol education class after two of his convictions. He did not provide any evidence that he is participating in alcohol counseling or treatment, evidence of actions he may have taken to overcome his problem or his pattern of maladaptive alcohol use or evidence to overcome it. He stated to the government investigator in 2021 that he does not drink and drive anymore. He provided no other evidence that future alcohol-related issues are unlikely to recur. None of the above mitigating conditions apply.

## **Guideline J: Criminal Conduct**

The security concern 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG & 31, and the following three 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 individual was formally charged, prosecuted, or convicted; and

Applicant has three DUI convictions from 2012-2019. In State B, he was charged with driving when privilege suspended for prior DUI conviction and an active bench warrant remains as of the close of the record. He also has a bench warrant from March 2017 from State B for failing to comply with probation conditions related to his 2015 DUI. In State C he was charged in December 2017 with leaving the scene of a crash and driving while license revoked for DUI. AG ¶¶ 31(a) and 31(b) apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 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 three DUI convictions from 2012 to 2019 and he repeatedly drove after his license was revoked or suspended. He did not establish that the two active bench warrants have been resolved. He did not provide mitigating information about his criminal conduct. Based on his past history and pattern of criminal conduct, I cannot find that future criminal behavior is unlikely to recur. Applicant has not provided evidence of successful rehabilitation. His past behavior casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) do not apply.

### **Guideline H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

(a) any substance misuse; and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant possessed and used cocaine three to four times in 2017. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant told the government investigator that he used cocaine three to four times in 2017 and does not intend to use any illegal drug again in the future. I was unable to make a credibility determination, but note that there are no other indications of illegal drug use in his past and that although he was required to disclose past drug use, it is unlikely that his past use of cocaine would have been discovered had he not disclosed it. It has been approximately five years since he used cocaine and future use is unlikely to recur. I find the above mitigating conditions apply.

#### **Guideline F: Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).



AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 10 delinquent debts that are in collection status and unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his financial issues to being underemployed during the pandemic when he was unable to pay some of his bills. He was unaware of many of his debts, but told the investigator he would look into them and resolve them. He admitted all of the debts alleged in the SOR. He did not provide any evidence of actions he has taken to pay, resolve, or dispute any of the delinquent debts. Applicant's underemployment may have been beyond his control, but he did not provide evidence of responsible actions to resolve the debts. None of the 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. Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline G, alcohol consumption, Guideline E, personal conduct, and Guideline J, criminal conduct. He mitigated the Guideline H, drug involvement and substance misuse 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.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant
Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT

Subparagraphs: 1.a-1.j:

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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge