



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



In the matter of: )  
)  
) ISCR Case No. 21-02600  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mark Lawton, Esq., Department Counsel  
For Applicant: *Pro se*

02/16/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant was arrested twice for driving while intoxicated in 2020, pled guilty, and was convicted. Insufficient time has passed since these two alcohol-related offenses occurred for them to be considered mitigated. He did not provide sufficient evidence to mitigate the security concerns alleged under Guideline G (alcohol consumption). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 21, 2020. On November 30, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guideline G (alcohol involvement). The CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) implemented by the DOD on June 8, 2017.

On a date that is unclear from the record, Applicant subsequently answered the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Answer; Tr. 7-8) The case was received in the DOHA hearing office on February 7, 2022 and was assigned to me on September 6, 2022. On September 16, 2022, DOHA issued a notice scheduling a hearing for October 25, 2022, by video-conference through an online platform.

The hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1 through 5, all of which were admitted without objection. Applicant testified but submitted no exhibits. At the conclusion of the hearing, I left the record open to allow him the opportunity to submit documentation in support of his case. On November 14, 2023, Applicant submitted three documents, which are marked as Applicant's Exhibits (AE) A, B, and C, and admitted without objection. The record closed on November 14, 2022. DOHA received the hearing transcript (Tr.) on November 3, 2022.

### **Amendment to the SOR**

During his hearing testimony, Applicant disclosed an alcohol-related offense from 1999 that had not been previously revealed. Department Counsel therefore moved to amend the SOR under ¶ E.3.1.17 of the Directive to add the offense under Guideline G. SOR ¶ 1.c was added as follows:

1.c. You were arrested and charged with Driving Under the Influence in [City, State] in 1999.

The amendment was accepted without objection, and Applicant did not request an opportunity to provide additional evidence about the new allegation. (Tr. 56)

### **Findings of Fact**

In his SOR Response, Applicant admitted SOR ¶¶ 1.a and 1.b, and provided a narrative statement. His SOR admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 50 years old. He and his wife have been married for 23 years. He has two daughters and one stepdaughter. He has been employed with a defense contractor since May 2020. (GE 1; Tr. 22)

Applicant testified that in December 2019, he was in a "dark place" after losing a job he had held for the previous 19 years. The COVID-19 pandemic began soon thereafter, and he had difficulty finding employment. He was hired by his current employer and clearance sponsor in May 2020 after several interviews. He has never held a clearance before. (Tr. 19-20; GE 1)

Applicant's April 2020 arrest occurred before he was hired. He and his wife had been arguing, and he decided to go for a ride. He went out and had "a couple of drinks." While driving home, he swerved to miss a deer, went off the road and hit a pole. Paramedics and police came to the scene. He failed a field sobriety test and was arrested for driving while intoxicated (DWI) first offense. (Tr. 20-21; GE 2, GE 3, GE 5) (SOR ¶ 1.a)

Applicant said he curbed his drinking after that for a few months, but in August 2020, after another argument with his wife, he left and drove to a nearby town and had "a few beers here and there." He said he swerved over the line and was arrested for a second offense. (Tr. 21) He later explained that it was a Saturday, and he started drinking around noon, and had a few drinks. He "sat in the country a little bit. Decided I would go get something to eat, . . . and the next thing I know, I'm getting pulled over for my second offense." (Tr. 34) He later pleaded guilty to another charge of DWI first offense. (Tr. 35-36; GE 2, GE 4, GE 5) (SOR ¶ 1.b)

In his background interview, Applicant gave more details. He said he started drinking around noon. He went to a local convenience store and purchased two 20-ounce cans of hard lemonade, and "went somewhere and sat." He then drove around for a while and ended up at a sports bar. He ordered wings and had two or three 20-ounce beers. A friend came in and Applicant had one or two more 20-ounce beers. He was there about two or three hours and went home around 8:30 or 9 pm. He was pulled over after the officer observed him weaving. Applicant had a blood alcohol content of either .16 or .18 according to the roadside sobriety test. (GE 2)

Applicant acknowledged that both of his arrests occurred in the aftermath of arguments with his wife. They have not participated in formal marital counseling, but they have met with some family friends and with their pastor to work through their differences. Things have improved since he stopped drinking after his most recent offense, in August 2020. (Tr. 23)

As to SOR ¶ 1.a, the April 2020 offense, Applicant pleaded guilty to DWI first offense in January 2021. He received a 60-day suspended jail sentence, one year of probation, and he was fined \$250. He was ordered to participate in an alcohol safety awareness program (ASAP) and was ordered to have an ignition interlock device installed on his car. He completed the classes and probation for that offense. (Tr. 31-33; GE 2, GE 3)

As to SOR ¶ 1.b, the August 2020 offense, Applicant pleaded guilty in February 2021. He was sentenced to six months in jail, of which five months and 10 days were suspended. (GE 4) He said he served eight days in jail after he was credited with previous time served. (GE 2) He was also ordered to participate in the ASAP program and to have an ignition interlock device placed on his car. (GE 2, GE 4)

Applicant reported his April 2020 offense on his May 2020 SCA. (GE 1 at 29) He discussed both offenses and the resulting sentences in his March 2021 background security interview, which, as he noted, occurred shortly before he was to report to jail to

serve his sentence. He voluntarily disclosed his August 2020 DWI during the interview. (GE 2)

The Government's documentation about the two offenses indicates that the ignition interlock device was to remain on Applicant's car for one year after his February 2021 sentence. (GE 3, GE 4). However, Applicant testified in his October 2022 DOHA hearing that the ignition interlock device "has to stay on my car for two years after the last conviction." (Tr. 26) He noted in his Answer that the interlock device would remain on his car until February 2023 (two years after his February 2021 sentence date). (Answer) He testified that he believed he was still on probation and under ignition interlock requirements until August 2023. (Tr. 26-27, 40) He testified that his license is restricted in that he cannot drive a car that is not equipped with an ignition interlock. (Tr. 40-41)

Applicant has not had any ignition interlock violations due to alcohol consumption. He has completed the classroom portion of the ASAP program, but he is still in the ASAP program due to the interlock requirement. (Tr. 26-29; AE A) He has had no subsequent alcohol-related offenses. (Tr. 36)

During his testimony, Applicant volunteered that he had a prior DUI arrest in 1999, an offense that he did not list on his SCA. (Tr. 42) He explained that he was taken out drinking by friends for his bachelor party the weekend before his wedding. He said he was allowed to drive home afterwards. He was arrested and charged with first offense DUI after he ran a stop sign. He later pled guilty, attended ASAP classes, and had a restricted driver's license for six months. He found new friends and priorities, and later earned an engineering degree. He also stopped drinking for 12 years. (Tr. 52-54) (SOR ¶ 1.c)

Applicant has "struggled a bit here and there," but has tried to remain sober. He is not proud of his actions. His relationship with his family, friends, and children has improved. (Tr. 21) He described his August 2020 as a life-changing event. He spent eight days in jail. He is grateful no one was injured, and he will not drink and drive again and hopes never to drink again. He has been sober since his last offense, in August 2020. (Tr. 29, 37)

Applicant has attended about half a dozen Alcoholics Anonymous (AA) meetings over the last two years, most recently in July 2022. He is prompted to go to meetings after a rough day at work or when arguing over money or things at home. He goes to AA meetings instead of going for a drink. He does not have a sponsor and is not formally in the AA 12-step program. (Tr. 24-25) He has not had any other alcohol counseling. (Tr. 42) Applicant believes he is an alcoholic. (Tr. 37)

Recent evaluations reflect that Applicant is regarded as a highly valued employee. He exceeds goals and expectations for his role and he demonstrates leadership and effectiveness in managing complex tasks. He has "grown immensely" in his time with the company and has been instrumental in accomplishing leadership roles and assigned tasks. (Tr. 22; AE B, AE C)

## Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

## Analysis

### Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set forth 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 disqualifying condition is 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 an alcohol use disorder.

Applicant was arrested, pled guilty, and was convicted of two DWI offenses in 2020, and he incurred an earlier DUI in 1999. AG ¶ 22(a) applies.

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 was arrested twice for DWI in 2020, including once after he submitted his SCA. At the time of the hearing, he remained on probation and his driving was subject to an ignition interlock program until at least February 2023, perhaps August 2023. These two incidents are recent enough that they remain a security concern, as evidenced by the fact that Applicant remained subject to restrictions at the time of the hearing. They did not occur under unusual circumstances, indeed, the circumstances were similar in that they occurred after arguments with his wife. Applicant is given some credit for acknowledging his issues with alcohol and for participation in AA and other counseling, and for his sobriety since his most recent offense. But I believe more time is needed for Applicant to demonstrate that his alcohol issues are behind him and that he handles life stresses in a more responsible manner than turning to alcohol. Applicant has also not yet demonstrated a track record of responsible conduct when he is no longer subject to the state's restrictions. Applicant's earlier DUI is a factor to be considered here, but I am more concerned about the recency of his two DWIs than I am about his older offense. With time, he may be able to demonstrate that he is a suitable candidate for eligibility for access to classified information by establishing a longer period of responsible alcohol use and compliance with the law. He did not establish that his offenses occurred under unusual circumstances, that his alcohol-related misconduct is unlikely to recur, or that his behavior no longer casts doubt on his current reliability, trustworthiness, or judgment. AG ¶ 23(a) and 23(b) do not fully apply to mitigate the Guideline G security concerns.

## **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(c):

(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.

Under the whole person concept, I credit Applicant's excellent work record, and his ongoing efforts to address his alcohol issues. But Applicant's alcohol-related offenses are simply too similar and too recent to warrant a finding that they are mitigated at this time. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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

### **Conclusion**

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

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Braden M. Murphy  
Administrative Judge