



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



In the matter of:	)	
	)	
	)	ISCR Case No: 21-02230
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esquire, Department Counsel  
 For Applicant: *Pro se*  
 03/15/2023

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Criminal Conduct and Alcohol Consumption guidelines. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On August 8, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines J (Criminal Conduct) and G (Alcohol Consumption). Applicant responded in an August 22, 2022 Answer to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing.

On November 16, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on November 21, 2022, and received by him on December 13, 2022. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant did not submit a Response or objections to the FORM within the time provided. Items 1 through 8 are admitted in evidence. On February 9, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

In his Answer, Applicant admitted all allegations contained in the SOR with clarifications. His admissions and explanations are incorporated into these findings of fact.

Applicant is 34 years old and not married. He earned a high school diploma in May 2006. In April 2020, he started a position with a defense contractor. In May 2020, he submitted his first security clearance application (SCA). Prior to this position, he worked for non-government employers and was unemployed at times. (Item 3)

In his SCA, Applicant disclosed a history of alcohol abuse and criminal conduct, which is set forth below:

1.a: In August 2007, Applicant was arrested and charged with Driving Under the Influence of Alcohol or Drugs (DUI), a misdemeanor. He was 20 years old. In September 2008, he was convicted and sentenced to one year of probation and ordered to pay a fine and attend a diversion class. (Item 2)

1.b: In April 2008, Applicant was arrested and charged with Minor in Possession of Alcohol, a misdemeanor. He was convicted and ordered to pay a fine. His driver's license was suspended for 30 days. (Item 2)

1.c: In August 2009, Applicant was arrested and charged with DUI and Refusal to Submit to a Preliminary Breath Test, both misdemeanors. He failed to appear in court in February 2010 and a warrant was issued for his arrest. (Item 2)

In April 2013, Applicant was convicted of DUI. He was sentenced to 12 months of probation and ordered to pay a fine. He was required to attend and complete an alcohol and drug treatment program, participate in Alcohol Anonymous (AA) meetings, install an interlock device, and complete a DUI victim panel class. (Item 2)

In accordance with the terms of the court's April 2013 order, Applicant participated in an out-patient alcohol treatment program for six months in 2013. As part of that program, he attended AA meetings and group sessions. (Item 4)

1.d: In November 2014, Applicant was arrested and charged with DUI, Refusal to Submit to a Preliminary Breath Test, and Failure to Maintain a Single Lane. He was 27 years old. He failed to appear in court in September 2015 and a warrant was issued for his arrest. (Item 2)

In April 2018, Applicant was served with an arrest warrant and was additionally charged with Possession of Marijuana and Use/Possession with Intent to Use. In June 2018, he pleaded guilty and was convicted of DUI (2<sup>nd</sup> conviction) and Incapable of Safely Driving. The marijuana possession charge was dismissed. He was sentenced to five days in jail. (Item 8 at 22, 24) After serving his jail time, he was placed on reporting probation for 12 months or until such time as he completed all probationary conditions. He was also fined and required to attend a DUI victim panel and an alcohol education class. (Item 8 at 23-25)

1.e: In January 2019, Applicant was charged with Violate Driver License Restriction, No Valid Driver's License in Possession, and Speed-30 MPH. He was also charged with violating the probation that was imposed in June 2018. He denied the driver license charges. He waived his right to a probation violation hearing and agreed to serve two days in jail for that infraction. The driver license charges were dismissed, and the speeding ticket was reduced to a lesser violation. He pleaded guilty to that violation and was fined. (Item 2, Item 8 at 28)

1.f: In April 2019, Applicant was charged with Tampering with an Ignition Interlock Device. He denied the charges but was required to serve two days in jail because he violated the terms of his June 2018 probation. In May 2019, the tampering charge was dismissed because at the time of the arrest, he was no longer required to have an interlock device.

On June 27, 2019, the court entered an order releasing Applicant from the probation that was imposed in June 2018. (Item 8 at 29)

During his June 22, 2020 interview, Applicant stated that he no longer consumes alcohol and drives. He said he is more mature now and uses ride-sharing services if he consumes alcohol when he is out. He said alcohol has not interfered with his job, finances, or relationships. (Item 4 at 9)

In interrogatories that Applicant signed in February 2022, he reported that an evaluator at the treatment program he attended in 2013, recommended that he abstain from alcohol consumption. He stated he was diagnosed as a "social drinker." (Item 4 at 20) He has not participated in counseling or treatment, other than that required by the court and while he was on probation between 2013 and 2014. He is not attending AA meetings or other recovery programs. (Item 4 at 21) Applicant also disclosed in his interrogatories that he continues to consume alcohol once or twice a week, and drinks two to five beers each time. (Item 4 at 20) In his August 22, 2022 Answer, he stated that he has not been stopped or charged with an alcohol-related offense since 2014. (Item 2)

## Policies

The national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 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 concerns 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 security concerns and may be disqualifying in this case: Three potentially apply:

(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;

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

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant was arrested and charged with DUI in 2007, 2009, and in 2014. He was legally intoxicated and impaired at the time of his arrests for DUI. He was subsequently convicted of each DUI. In 2008, he was arrested and convicted for an alcohol-related offense. The evidence establishes disqualifying conditions under AG ¶¶ 22(a) and 22(c). In April 2013, Applicant entered a six-month alcohol treatment program. The record does not contain records from that program documenting a diagnosis of an alcohol use disorder by a qualified medical or mental health professional. AG ¶¶ 22(d) and 22(f) do not apply. Applicant admitted that the person who evaluated him during the program, recommended that he abstain from alcohol.

AG ¶ 23 provides four conditions that could provide mitigation of the alcohol consumption 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.

Applicant was arrested for alcohol-related offenses in 2007, 2008, 2009 and 2014. He was released from the probation that was imposed for his 2014 DUI in June 2019. From 2014 to 2019, he has been involved in the legal system as a consequence of consuming too much alcohol on more than one occasion. Although some time has passed since his 2014 DUI, the circumstances underlying his legal problems were not so unusual that they are unlikely to recur. The evidence establishes partial mitigation under AG ¶ 23(a).

Applicant has not acknowledged that he has an alcohol problem, and he continues to consume alcohol with regularity despite being advised during his treatment in 2013 to abstain. He is not participating in treatment or attending AA. Despite his assertions that he no longer consumes alcohol and drives, there is insufficient evidence from credible sources to verify that alcohol no longer presents a problem for him. Accordingly, he failed to establish mitigation under AG ¶¶ 23 (b), 23(c) and 23(d).

### **Guideline J: Criminal Conduct**

AG ¶ 30 sets out the security concern related to criminal conduct:

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 two conditions that could raise a security concern and may be potentially disqualifying in this case:

(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.

Applicant was arrested and convicted four times between 2007 and 2018. He was on probation from September 2008 to September 2009, April 2013 to April 2014, and June 2018 to June 2019. He was found guilty of probation violations twice in 2019. These multiple incidents raise questions about his judgment and trustworthiness. The evidence establishes the above disqualifying conditions.

AG ¶ 32 describes conditions that could mitigate the security concerns raised under this guideline. One could apply:

(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 arrested since November 2014. In January and April 2019, he pleaded guilty to violating probation and served two days in jail each time. In June 2019, he was released from the probation that was imposed in June 2018 for the 2014 DUI. Other than his release from probation and the passage of time from 2019 without recurrence of criminal activity, there is no other evidence of successful rehabilitation. The evidence establishes some mitigation under AG ¶ 32(d), but is insufficient to fully mitigate the 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(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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature person who is accountable for his choices and actions. He has a history of failing to comply with the law, rules, and regulations, as demonstrated by his past alcohol-related criminal conduct. He repeatedly violated the law, violated probation, and failed to appear in court as was ordered. There is insufficient evidence to establish permanent behavioral changes in Applicant's consumption of alcohol and compliance with the law, so I cannot conclude that similar conduct is unlikely to recur. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the criminal conduct and alcohol consumption guidelines.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

### **Conclusion**

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

Shari Dam  
Administrative Judge