



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01424
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

03/08/2023

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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. He mitigated the Guideline B, foreign influence concerns. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On October 25, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, J, B. The DOD 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 November 27, 2021, and requested a hearing. The case was assigned me on August 3, 2022. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on August 23, 2022, and the hearing was originally set for October 4, 2022. The hearing was continued and rescheduled for November 2, 2022. It was held as rescheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list and disclosure letter were marked as hearing exhibits (HE) I and II. At the Government's request and without objection from the Applicant, I took administrative notice of information about Ethiopia as reflected in HE III. Applicant testified and offered exhibits (AE) A-D, which were admitted into evidence without objection. In a timely post-hearing submission, Applicant offered AE E, which was admitted without objection. DOHA received the hearing transcript (Tr.) on November 16, 2022.

### **Jurisdictional Issue**

Department Counsel confirmed that Applicant was being sponsored for a clearance by another government agency. That confirmation is reflected in email correspondence marked as HE IV. (Tr. 14)

### **Administrative Notice**

I take administrative notice that Ethiopia experiences political instability due to military conflicts with various factions. There is a Level 3 (Reconsider Travel), U.S. State Department travel warning for Ethiopia. Terrorist threats are ongoing within the country. Ethiopia's human rights record is poor. (HE- III)

### **Findings of Fact**

In Applicant's answer, he admitted some of the Guideline G allegations in the SOR and denied others. He failed to either admit or deny the Guideline J allegations. Since the underlying allegations are the same under both Guidelines, he is deemed to have admitted and denied the same allegations under Guideline J as he did for Guideline G. He admitted the Guideline B allegation, with explanations. His admissions are adopted as findings of fact. After a thorough and careful review of the testimony, pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 63 years old. He is divorced and has two adult children. He is currently employed by a government contractor. He has worked for different government or defense contractors as a power plant technician on various contracts over the years, dating back to 2010. Many of these contracts required his presence in combat zones, such as Iraq and Afghanistan. He was honorably discharged from the Marine Corps after serving from 1979 to 1985. He has three associate's degrees. He held a security clearance while in the Marine Corps and at various times while serving as a government-contractor employee. (Tr. 7, 32-34, 39, 41; GE 1; AE A)

The SOR alleged Applicant was charged with driving while intoxicated (DWI) on eight occasions: May 1986; January 1989; April 1990; April 1993; January 2000; April 2001; February 2002; and November 2019. (SOR ¶¶ 1.a-1.h) Department Counsel

moved to withdraw the allegations in SOR ¶¶ 1.c, 1.e, and 1.f. That motion was granted and those withdrawals will be reflected in my formal findings. This conduct was also alleged as criminal conduct under Guideline J in the SOR. (SOR ¶ 2.a) Finally, the SOR alleged that Applicant had a girlfriend who is a resident and citizen of Ethiopia, and for whom he provided financial support. (SOR ¶ 3.a)

Applicant began drinking alcohol approximately two times a week when he was 18 or 19 years old after he joined the Marine Corps. In his early 20s to 30s, his alcohol consumption increased to about three to four times a week. He stated that during the last 10 to 15 years, his alcohol consumption has decreased. He admitted that he would often drink and become “buzzed.” He would drive while he was ‘buzzed.’ He admitted driving while drunk more times than when he was arrested. He claimed that he did not drink to intoxication between 2002 and 2019. He also claimed the last time he drank alcohol was when he was arrested for DWI in November 2019. (Tr. 43-50)

The details of his arrests follow:

**May 1986 DWI (SOR ¶ 1.a)**-Applicant testified that he and friends were at the beach where he had four to five beers. He drove back home from the beach and was stopped by law enforcement for a traffic violation. He admitted this arrest for DWI and he claimed the charge was later reduced to reckless driving. He was drinking alcohol about four times a week at that time in his life. (Tr. 51-52; GE 3-4; SOR answer)

**January 1989 DWI (SOR ¶ 1.b)**-Applicant testified that he had been at a party until about 4:00 am and then drove home. He was stopped by law enforcement for speeding and weaving. He was administered field sobriety tests, which he failed. He was arrested for DWI and refused to take a breath test. Applicant admitted pleading guilty to a misdemeanor DWI and was sentenced to two years’ probation and fined. (Tr. 53-54; GE 3-5 (pp. 6-7); SOR answer)

**April 1993 DWI (SOR ¶ 1.d)**-Applicant denied this arrest in his answer but admitted it during his hearing testimony. Applicant was stopped by law enforcement after nearly colliding with a police vehicle when entering a service road. Applicant was observed by officers to stagger, lean on his vehicle for support, wobble while walking, exhibit slow depressed reflexes, and have “thick” speech. Applicant also became belligerent toward the responding officers, which resulted in him being handcuffed. After transportation to the station, Applicant was administered field sobriety tests. He admitted drinking two beers at home. A breath test determined his blood alcohol content at 0.11, over the legal limit of 0.08. All Applicant’s actions at the police station related to this arrest were videotaped. He was arrested for DWI. He pleaded not guilty in court but was convicted of a DWI first offense in September 1993 and received a sentence of two years’ probation and a fine. (Tr. 59-65; GE 5 (pp.- 1-3); SOR answer)

**February 2002 DWI (SOR ¶ 1.g)**-Applicant denied this arrest in his answer but admitted it during his hearing testimony. He did not recall the details of this arrest. Court

documents reveal that he pleaded guilty and was convicted of DWI in September 2002. (Tr. 71-72; GE 3 (pp. 10-11); SOR answer)

**November 2019 DWI (SOR ¶ 1.h)**-Applicant admitted this arrest in both his answer and his hearing testimony. Applicant testified that he had just returned from Afghanistan and went to a sports bar where he had one beer. In his SOR answer he admitted drinking two beers. He was arrested and charged with DWI-3<sup>rd</sup>, a third degree felony. No police reports or court disposition documents are in the record. Applicant claimed he pleaded guilty to a misdemeanor DWI charge and received a sentence of probation. Applicant presented documentation from his probation officer that he complied with all the conditions of his probation, had no probation violations, and paid all of his financial obligations. His probation terminated with him in good standing in June 2022. (Tr. 72-76; GE 3 (p 12); SOR Answer; AE B, E)

Applicant listed in his 2020 security clearance application (SCA) attending court-ordered alcohol counseling in 1990 and 2001, but he did not supply any documentation about either program or detail what was involved with these programs, in terms of diagnoses, prognoses, or treatment plans. (GE 1)

Applicant testified that he does not consider himself an alcoholic, rather he is “just a person that had bad luck.” He claims to attend Alcoholics Anonymous (AA) about once a month, but he admitted that he does not have sponsor, nor does he work the AA 12-step program recommended for recovering alcoholics. He also claims he has no further interest in consuming alcohol. As an example, he cited that he recently attended a family gathering where alcohol was present, but he did not consume any. (Tr. 78-81, 90)

The Guideline B allegation concerns Applicant’s relationship with a woman who is a citizen and resident of Ethiopia. He admitted having a relationship with this woman and providing her financial support. He was in contact with her from approximately 2017 to 2019. He met her when he was in Ethiopia, and she was a receptionist at a hotel. From 2017 to 2019, he provided her with approximately \$1,000 per month to help her and her family. During this time, he was in contact with her on a weekly basis. He visited her in Ethiopia on several occasions. The last time he was in Ethiopia was in 2019. He ended his relationship with this woman in approximately June 2019, when he came back to the United States after his job in Southwest Asia ended. The last contact with her was in June 2019. The last financial support he provided was in August 2019. He has no intentions of contacting her, seeing her, or providing any additional financial assistance to her in the future. (Tr. 81-88)

Applicant presented six character letters from friends and colleagues. They describe Applicant as responsible and someone who is dedicated, hard-working, and who has high character. Several recommend continuation of his security clearance. Applicant also presented several awards, certificates, and pictures demonstrating his service to the country over the years. (AE C-D)

## 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 five DWI arrests and his description of his drinking habits support the application of the above disqualifying conditions.

I have also considered all 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 April 2019. This might be considered attenuated by time, but for his four earlier DWI arrests and convictions in 1986, 1989, 1993 and 2002. He claims he has stopped drinking alcohol since his 2019

arrest, however, his history of continued drinking and driving suggest that is unlikely. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply.

Applicant denies that he is an alcoholic, rather he believes he just has bad luck. His claim of abstinence, without corroboration, or evidence of treatment success, is not credible. AG ¶ 23(b) does not apply.

Other than self-reported sporadic attendance at AA meetings, Applicant failed to document the completion of any treatment plans. In his SCA, Applicant claimed participation in court-ordered alcohol treatment programs, although there is no documentation of these programs and no details of what these programs entailed. Furthermore, his repeated alcohol-related incidents after such treatment indicated he has not successfully addressed his problem. AG ¶ 23(d) does not 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 five DWIs constitute a pattern of criminal conduct. I find that both disqualifying conditions apply.

I have also considered all 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.

Concerning these mitigating conditions, see the earlier discussion regarding AG ¶¶ 23(a), 23(b) and 23(d). Additionally, Applicant does not acknowledge his alcohol problems, which is the first step toward rehabilitation. He did successfully complete his latest sentence of probation and has a good employment record. AG ¶ 32(a) does not apply, but AG ¶ 32(d) has some application.

### **Guideline B, Foreign Influence**

AG ¶ 6 explains the security concern about "foreign contacts and interests" as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the



government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism.

The relationship between Ethiopia and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationship with his girlfriend living in Ethiopia does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his girlfriend living in Ethiopia who might be coerced by governmental entities or pressured to assist Ethiopia.

While there is no evidence that intelligence operatives from Ethiopia seek or have sought classified or economic information from or through Applicant, or his girlfriend living in Ethiopia, it is not possible to rule out such a possibility in the future. AG ¶ 7(a) applies based upon Applicant's girlfriend who is a resident and citizen of Ethiopia.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, including:

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant credibly testified that although he formerly had a relationship with his Ethiopian girlfriend from approximately 2017 to August 2019, that relationship ended in 2019, and he has had no further contact with her since that time. Moreover, he stated that he does not intend to contact her or provide her financial support in the future. AG ¶ 8(c) applies.

### **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 military service, his contractor service in combat areas, his letters of recommendation, and his awards and certificates. However, I also considered that he has not come to grips with his alcohol issues. He continues to deny having alcohol problems even though it has resulted in five different DWI charges against him over the course of more than 30 years. Applicant failed to provide sufficient evidence to mitigate the alcohol consumption and criminal conduct security concerns. He ended his relationship with his Ethiopian girlfriend in 2019 and has had no further contact with her.

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, but he mitigated the concerns under Guideline B.

### **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.b, 1.d, 1.g-1.h:	Against Applicant
Subparagraphs 1.c, 1.e, 1.f:	Withdrawn
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a: as 2.a refers to the withdrawn allegations stated in 1.c, 1.e, and 1.f)	Against Applicant (except
Paragraph 3, Guideline B:	FOR APPLICANT
Subparagraph 3.a:	For 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