



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



In the matter of: )  
)  
) ISCR Case No: 22-02014  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*  
04/17/2023

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the guidelines for alcohol consumption, personal conduct, and criminal conduct. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On November 8, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct. (Item 2.) Applicant responded to the SOR on November 15, 2022, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 3.)

On January 4, 2023, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant, and received by her on January 13, 2023. The FORM notified her that she 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 respond to the FORM or object to Items 1 through 6 within the time provided, nor did she

request an extension of time to do so. Hence, all six Items in the FORM are admitted into evidence. On March 21, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

Applicant admitted the two SOR allegations contained in SOR Paragraph 1, with explanations; she denied the allegation contained in SOR Paragraph 2, with explanations; and she admitted the SOR allegation contained in SOR Paragraph 3, with explanations. (Item 2) Her admissions are incorporated into these findings of fact.

Applicant is 45 years old. She was married in 2007, but is currently separated. She has four children, ranging in age from 9 to 28 years old. She earned a bachelor's degree in 2002, and has taken additional college credits. She has worked for federal contractors since April 2015, with a brief period of unemployment in mid-2021. She started her current position with a federal contractor in October 2021. (Item 3)

Applicant completed her Electronic Questionnaires for Investigations Processing (e-QIP) on October 21, 2021. In response to questions in Section 22 inquiring about a police record, she disclosed that in July 2021, she was charged with driving under the influence (DUI), a misdemeanor, and was awaiting a trial scheduled for November 2021. In Section 24 inquiring about her use of alcohol, she explained that on July 22, 2021, she had been consuming alcohol prior to work and was later terminated from her former job. (Item 3)

According to a disciplinary report from her employer, Applicant was terminated on July 27, 2021, for failing to uphold the company's personal conduct and work performance standards; engaging in conduct which could impair relationships between employees and customers; reporting to work intoxicated; and engaging in physical behaviors that caused disruptions and created unsafe work conditions. (Item 5)

In February 2022, Applicant was interviewed by an investigator for the Office of Personnel Management (OPM). She confirmed that she was working the third shift on July 22, 2021, and came to work with alcohol on her breath. She stated that she had been consuming alcohol with another colleague. She acknowledged that she was intoxicated. She explained that her employer did not object to employees drinking alcohol prior to work, but they were not permitted to come to work intoxicated or smelling like alcohol. (Item 4)

When Applicant arrived at work, she was displaying inebriated behaviors and was offered a ride home by a coworker. Instead of taking that ride, she decided to drive home. She was stopped by the police. She failed a sobriety test. She was taken to the police station and failed a blood test. She remained at the police station overnight and was charged with DUI. She was later terminated from her job. She told the investigator that

the COVID-19 lockdown contributed to her consumption of alcohol as she was feeling stressed and isolated during the pandemic. (Item 4)

On January 15, 2022, Applicant pleaded guilty to the DUI charge and was ordered to pay a \$1,200 fine. She was placed on probation for one year and required to undergo alcohol/drug testing twice a month. She was also required to attend alcohol education courses and participate in an alcohol evaluation. In her October 11, 2022 answer to interrogatories, she disclosed that she attended Alcoholics Anonymous (AA) during the weeks following her arrest, but was not attending as of the date of the interrogatories. She said her friends and family are aware of her DUI. (Item 4)

Applicant's interrogatories also inquired about her history of alcohol use since January 2010. She disclosed that she drank "vodka/bourbon/whiskey many dates over twelve and a half years. . . 1-2 times a week and on holiday/1-6oz." (Item 4) She drank "wine multiple dates over twelve and a half years . . . daily/glass." (Item 4) She drank "beer . . . multiple dates over twelve and a half years . . . daily/12-14 oz." (Item 4). The last time she used hard liquor was on October 10, 2022, the day before she responded to the interrogatories. She noted that she intended to consume hard liquor, wine, and beer in the future for recreational purposes. (Item 4) She stated that she had not been diagnosed with an alcohol-related disorder as of the date of these interrogatories. (Item 4)

In her Answer, Applicant acknowledged that she made a bad decision when she decided to drink before going to work. She said this was an isolated incident, and in the future, she would not consume alcohol and drive, or go to work after consuming alcohol. (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 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 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, “Any 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 describes 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 lists conditions that could raise a security concern and may be disqualifying in this case. Two may 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; and

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder.

In July 2021, Applicant reported to work in an intoxicated state and then left work and drove her car. She was subsequently arrested and charged with DUI, after failing sobriety and blood tests. In January 2022, she pleaded guilty to the DUI. The evidence raised the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 23 provides conditions that could mitigate security concerns under this guideline. Four may potentially apply in this case:

(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 DUI in July 2021, less than two years ago. Based on her history of regularly consuming alcohol, there is insufficient evidence to find that the circumstances surrounding her DUI were unusual, so they continue to cast doubt on her

judgment and reliability. Applicant admitted that she made a serious mistake when she drank alcohol before going to work, but she has not provided credible evidence that she has taken actions to overcome her problem. She did not submit evidence that she is participating in counseling or treatment, or is otherwise making satisfactory progress in addressing her drinking problems. She did not present documentation that she successfully completed the court-ordered alcohol education classes or provide the results of her alcohol evaluation. There is insufficient evidence to establish any of the above mitigating conditions.

## **Guideline J: Criminal Conduct**

AG ¶ 30 describes the security concerns 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 conditions that could raise a security concern and may be disqualifying in this case. Two may potentially apply:

- (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
- (c) individual is currently on parole or probation.

In July 2021, Applicant was arrested and charged with DUI. In January 2022, she pleaded guilty to DUI, and was placed on probation for a year and ordered to undergo an alcohol evaluation and attend AA. After receiving the FORM on January 13, 2023, she did not submit evidence that she had been released from probation or completed the other requirements of her sentence. The evidence establishes the above disqualifying conditions.

AG ¶ 32 describes conditions that could mitigate security concerns raised under this guideline. Two may potentially apply:

- (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.

There is insufficient evidence to establish mitigation under AG ¶ 32(a) for the same reasons set forth above, under AG ¶ 23(a). There is no evidence that Applicant successfully complied with the terms of her probation and was released from it. She did not provide evidence that she completed the other terms of her sentence. She did not submit evidence of a good employment record since July 2021, or other evidence of successful rehabilitation. There is insufficient evidence to establish mitigation under AG ¶ 32(d).

### **Guideline E: Personal Conduct**

AG ¶ 15 explains the security concerns relating to 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 in this case. Two may potentially apply:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

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

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

When Applicant came to work inebriated on July 22, 2022, she exhibited intoxicated and inappropriate conduct that created a vulnerability to duress because it would predictably affect her personal and professional standing. It was also in violation of several conditions of her employment. The evidence establishes both disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns raised under this guideline. Three may potentially apply:

(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 decision to go to work inebriated in July 2021 was not a minor offense, and did not happen under unusual circumstances, as discussed under the alcohol consumption and criminal conduct guidelines above. Applicant acknowledged her misconduct, but did not provide proof that she has participated in counseling, or took other steps to address the underlying factors contributing to her unreliable conduct. She did not present credible evidence to indicate that similar conduct will not recur in her personal life or in her work environment. There is insufficient evidence to establish mitigation under AG ¶¶ 17(c), or 17(d). Applicant said her family and friends are aware of the situation, which may reduce her vulnerability to exploitation or duress, so AG ¶ 17(e) minimally applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 adult, who is accountable for her decisions and actions. In July 2021, Applicant went to work inebriated. She then declined an offered ride, tried to drive home, and was arrested and charged with DUI. In January 2022, she was convicted of DUI and placed on a year-long probation with several court-ordered requirements pertinent to alcohol abuse. She submitted no evidence confirming that she successfully completed probation or alcohol treatment, and now recognizes the significance of her past behavior. There is no evidence pertinent her court-ordered alcohol evaluation. The absence of credible evidence of rehabilitation precludes a conclusion that she could be relied upon to comply with security-related requirements for the protection of classified and sensitive information. She did not meet her burden to mitigate the security concerns arising under the guidelines for alcohol consumption, criminal conduct, and personal conduct.

### **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 G:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

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

SHARI DAM  
Administrative Judge