



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02299
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Aubrey M. De Angelis, Esquire, Department Counsel

For Applicant:  
Brittany Forrester, Esquire

July 18, 2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

Applicant was twice arrested for alcohol-related offenses, most recently in August 2021 and has used ecstasy and marijuana while granted access to classified information. He continues to drink alcohol. Overall, he has exhibited a pattern of poor judgment and unreliability and has not mitigated the security concerns raised by his conduct. National security eligibility is denied.

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on August 31, 2021. On January 13, 2023, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines J (Criminal Conduct), H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and E (Personal Conduct). This action was taken under Executive Order 10865, *Safeguarding Classified*

*Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within DoD after June 8, 2017.

On February 7, 2023, Applicant answered the SOR in a written response (Answer) and requested a hearing before an administrative judge. On March 22, 2023, Department Counsel was ready to proceed with the hearing. The case was assigned to me on March 30, 2023. On April 6, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Microsoft Teams Video Teleconference Hearing, scheduling the hearing for May 24, 2023. The case was heard as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which I admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits (AE) A through R, which I also admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 2, 2023. (Tr. at 7-8.)

### **Findings of Fact**

Applicant is 35 years old, unmarried, and has no children. He attended college during the period of 2006 to 2011 and earned a bachelor's degree. He took post-graduate classes during the period of 2011 to 2015 and earned a master's degree. He was granted a security clearance in June 2009 in connection with summer employment with a DoD contractor while attending college. He was granted a clearance again in 2011 following his undergraduate graduation when he was employed by a U.S. Navy facility. He applied for a higher-level clearance in or about 2016, and his clearance application was denied due to his prior drug use after being granted access to classified information. He has worked for a U.S. Government contractor since April 2015. He is presently seeking a security clearance in relation to his employment. (Tr. at 9-11, 30-32; GE 1 at 38-39; GE 2 at 38-40; AE G.)

### **Paragraph 1 (Guideline J, Criminal Conduct)**

The details regarding the SOR allegations set forth in paragraph 1 are as follows:

1.a. In August 2021, Applicant was arrested and charged with Driving Under the Influence of alcohol (DUI). He attended a wedding reception prior to his arrest and drank beer for three to four hours. He went to the party intending to drive home, and he believed he was sufficiently sober to drive. He was stopped due to poor driving, and his BAC following the arrest was 0.15%. The arrest occurred three days before he submitted his 2021 e-QIP. (Tr. at 11-16, 47; GE 2 at 38.)

Applicant pled guilty to DUI and was given a standard first-offender sentence requiring him to attend a three-month alcohol education and awareness course. The requirements of the course included attendance at meetings of Alcoholics Anonymous

and Mothers Against Drunk Driving. The state motor vehicle department (DMV) imposed a three-year restriction on his license, which will end in 2025. The DMV also required Applicant to have a breathalyzer interlock device on his car for a period. (Tr. at 14-15, 42-43; 45; AE K; AE L.)

1.b. Applicant experienced a prior arrest related to his use of alcohol. In 2015, he and his then-girlfriend went to a bar. Applicant believes that someone added a drug to his drink. He wrote in the Answer that a friend accompanied him and his former girlfriend, and the friend also believed he was drugged. Applicant has no memory of the events of the evening. He believes his female companion was the actual target of the drug incident. He claims that he subsequently learned that he went to a second bar where he had an altercation with the bar's bouncer. He was arrested and charged with Drunk in Public. He hired a lawyer, and the charge was dropped. Applicant submitted no corroborating testimony regarding his claim that he was drugged, such as a written statement from the friend who accompanied him to the first bar. (Tr. at 16-18, 35, 47; AE J at 2.)

## **Paragraph 2 (Guideline H, Drug Involvement and Substance Misuse)**

The details regarding the SOR allegations set forth in paragraph 2 are as follows:

2.a. After having been granted access to classified information during 2011, Applicant attended two concerts with a friend. The friend gave him MDMA (Ecstasy) during both concerts, which occurred in or about December 2014 and October 2015. Applicant took the illegal drug knowing that to do so was inconsistent with his responsibilities and commitments as a person granted access to classified information. He asserted at the hearing that these were just two instances of poor judgment. (Tr. at 18-19, 46.)

2.b. Beginning in high school and extending through his college years and his post-graduate education when he worked at a DoD facility, Applicant used marijuana. He claims that his use during the period of 2010 to 2015 was limited to four occasions. (Tr. at 19-21; AE G.)

The record contains his 2011 security clearance application in which he wrote that his last use was in 2007 when he was in high school. He asserted, "I was young and I have no desire to use it again." He was granted a clearance. In his 2021 e-QIP, he contradicted his disclosure in his 2011 security clearance application, that his last use of marijuana was in 2007, by disclosing that his first use during the relevant time period was in May 2010. He partially blamed his former girlfriend for his poor judgment in using illegal drugs. His current girlfriend uses marijuana on a regular basis for medical purposes. Applicant denied that her use of marijuana has any effect on his abstinence. He repeated his 2011 statement regarding his intent not to use marijuana in the future by writing, "I have no desire to partake in these activities now or in the future." (GE 1 at 36-37; GE 2 at 35.)

The Government does not allege in the SOR another government agency's (AGA) denial of Applicant's national security eligibility. The SOR also does not cross allege, under Guideline J, Applicant's criminal conduct using illegal drugs.

### **Paragraph 3 (Guideline G, Alcohol Consumption)**

The details regarding the SOR allegations set forth in paragraph 3 are as follows:

3.a. The Government cross-alleges the two alcohol-related offenses under Guideline J under the guideline for Alcohol Consumption.

3.b. The SOR further alleges that Applicant continues to consume alcohol despite his two alcohol-related arrests and his completion of a three-month alcohol education and awareness program, which was required pursuant to his DUI sentence. Applicant asserts that he drinks much less following his 2021 DUI arrest. He claims he now only drinks a couple times a week at dinner on weekends. He acknowledged that he sometimes drinks to the point of intoxication and has blacked out in the past, though not more than once a year. He last drank excessively in the summer of 2021 at a friend's birthday party. (Tr. at 25-26; 38-39.)

### **Paragraph 4 (Guideline E, Personal Conduct)**

The details regarding the SOR allegations set forth in paragraph 4 are as follows:

4.a. The Government cross-alleges the SOR allegations in subparagraphs 1.a, 1.b, 2.a, 2.b, and 3.b under Personal Conduct guideline.

### **Mitigation**

Applicant provided extensive evidence in mitigation of the security concerns raised by his conduct as detailed above. I have thoroughly reviewed all of the evidence, and it is unnecessary to describe it at length. In summary, he has provided written statements of intent to not repeat his past misuse of alcohol and illegal drugs. He has provided evidence of alcohol and drug tests taken to show that, on the days he was tested and for periods preceding the tests, he had not used alcohol or illegal drugs. He submitted evidence of awards, bonuses, and favorable performance evaluations he has received from his employer. He provided copies of his bachelor's and master's degrees and his driver's license. Applicant's evidence includes five reference letters in which the authors praise Applicant's many admirable qualities and good character. (AE A through R.)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list

potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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, "Any 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Paragraph 1 (Guideline J, Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

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 five conditions that could raise security concerns under this guideline. The following condition is potentially applicable in this case and may be disqualifying:

(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's two alcohol-related arrests establish the above potentially disqualifying condition and shift the burden to Appellant to mitigate security concerns. AG ¶ 32 sets forth four mitigating conditions under Guideline J. The following two mitigating conditions have possible application in this case:

(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.

Mitigation under AG ¶ 32(a) has not been established. With respect to Applicant's 2015 arrest for Drunk in Public, Applicant testified about his belief as to what happened that night, *i.e.*, that a stranger put an incapacitating drug in his drink. Under the circumstances presented by the evidence in this case, an alternative explanation for Applicant's subsequent arrest is that he drank excessively that night and became unruly. Applicant failed to provide sufficient credible evidence to meet his burden of proof that the circumstances of his arrest were "unusual" and unlikely to recur. In fact, his excessive drinking did recur in 2021, and he was again arrested and charged with DUI. His BAC at that time was almost double the minimum amount required to establish the offense of DUI.

Mitigation under AG ¶ 32(d) is only partially established. Applicant provided evidence of successful rehabilitation in the form of his excellent employment record and solid character references. He also fully complied with the terms of his DUI sentence, though he remains on probation with the state DMV and his license is subject to revocation until 2025. Applicant continues to drink alcohol, however, raising the possibility of further criminal involvement due to his drinking. Insufficient time has passed since his August 2021 DUI arrest to warrant a conclusion that he can drink alcohol responsibly without the recurrence of criminal activity. Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline H, Drug Involvement and Substance Misuse)**

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 describes seven conditions that could raise security concerns. The following conditions are potentially applicable in this case and may be disqualifying:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant's testimony regarding his history of drug use after having been granted access to classified information establishes the above disqualifying conditions and shifts the burden to him to mitigate the security concerns raised by his conduct. The guideline includes the following two conditions in AG ¶ 26 that could mitigate the security concerns arising from Applicant's drug involvement and substance misuse:

- (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 taken to overcome the problem,

and has established a pattern of abstinence, including, but not limited to:

- (1) dissociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were 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 has only partially established the above mitigating conditions. His last use of an illegal drug occurred several years ago and is unlikely to recur. He has acknowledged his drug involvement, has established a pattern of abstinence, and has taken the steps above. His current girlfriend's use of marijuana for medicinal purposes raises some concerns but is not determinative. Applicant's repeated and deliberate use of illegal drugs while granted access to a security clearance, however, reveals a lack of maturity and reliability that casts doubt on his current trustworthiness and good judgment. Paragraph 2 is found against Applicant.

### **Paragraph 3 (Guideline G, Alcohol Consumption)**

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 seven conditions that could raise security concerns. The following conditions are potentially applicable in this case and may be disqualifying:

- (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.

Applicant's two alcohol-related arrests establish AG ¶ 22(a) and his admission that he continues to drink alcohol excessively, though less frequently than in the past, establishes AG ¶ 22(c). This shifts the burden to Applicant to mitigate the security



concerns raised by his conduct. AG ¶ 23 sets forth the following four mitigating conditions under Guideline G:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such 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.

None of the above mitigating conditions have been established. Applicant's abuse of alcohol casts doubt about his current reliability, trustworthiness, and good judgment. He claims that he has modified his drinking habits, but he provided no evidence that his reduced consumption is in accordance with treatment recommendations. He is not participating in counseling or a treatment program and has not completed a treatment program. His last arrest for DUI was too recent to permit a conclusion that he has demonstrated a clear and established pattern of modified consumption. Paragraph 3 is resolved against Applicant.

#### **Paragraph 4 (Guideline E, Personal Conduct)**

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 seven conditions that could raise security concerns. The following condition is potentially applicable in this case and may be disqualifying:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

To the extent that any of the above adverse determinations under other guidelines is insufficiently supported, the record evidence, when considered in its entirety supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. AG ¶ 16(c) is established. AG ¶ 17 sets forth the following two mitigating conditions under Guideline E that have possible application to the facts in this case:

(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; and

(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.

Neither of the above mitigating conditions has been established. The series of poor judgments made by Applicant over a number of years, up to and including 2021, casts doubt on his reliability, trustworthiness, and judgment. Moreover, he has not fully recognized his problematic behavior or obtained counseling to change his behavior. He continues to drink alcohol without the benefit of any significant counseling, other than a standard three-month education and awareness course ordered by the sentencing judge in connection with Applicant's DUI offense. A repetition of the 2021 DUI offense is not unlikely since Applicant continues to drink alcohol, sometimes to excess. Also, Applicant did not believe then or today that he was under the influence of alcohol before he attempted to drive home when he was arrested with a BAC of 0.15%. His judgment with respect to his alcohol consumption lacks maturity and reliability. This paragraph is found against Applicant.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, H, G, and E in my whole-person analysis. I have weighed Applicant's abstinence from illegal drugs and his claim that he has reduced his alcohol consumption. I have also considered his impressive employment record and the comments of his character references. However, Applicant has acted immaturely and irresponsibly for a number of years, and as recently as August 2021. He has broken past promises of abstinence from drugs, which undercuts the mitigation value of his current promises not to use illegal drugs and avoid drinking and driving. This pattern of behavior is inconsistent with the maturity and reliability required of a person granted access to classified information. Moreover, he has failed to provide sufficient evidence of actions taken to avoid future unreliable conduct or to mitigate the evidence of his poor judgment. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

## 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 and 1.b:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON  
Administrative Judge