



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



In the matter of:)	
)	
)	ISCR Case No. 22-01771
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Christopher Snowden, Esq.

10/31/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, alcohol consumption. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On October 13, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G. 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, through counsel, on November 7, 2022, and requested a hearing. The case was assigned me on April 19, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 8, 2023, and the

hearing was originally set for June 22, 2023. The hearing was continued and rescheduled for July 7, 2023. It was held as rescheduled. The Government offered exhibits (GE) 1-16, which were admitted into evidence without objection. The Government's exhibit list and disclosure letter were marked as hearing exhibits (HE) I and II. Applicant testified but he did not offer any additional exhibits other than those attached to his answer (See Applicant's exhibits attached to his answer: AE A-H). No objection was posed by Department Counsel to those exhibits. DOHA received the hearing transcript (Tr.) on July 18, 2023.

Findings of Fact

In Applicant's answer, he admitted SOR ¶¶ 1.a-1.d, with explanations. He denied SOR ¶¶ 1.e-1.g. 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 33 years old. He is single, never married and has one minor child, who lives with his mother. He is currently employed by a government contractor, for whom he has worked since November 2019. He is a network engineer who has numerous information technology (IT) certifications. He received his initial IT training from the Army. He enlisted in the Army in 2013 and served until October 2019, when he was honorably discharged. He is a high school graduate and has taken some college courses. (Tr. 19-20; GE 1-2)

The SOR alleged Applicant: **(a)** received alcohol treatment in 2015, from the Alcohol and Substance Abuse Program (ASAP); **(b)** received nonjudicial punishment for being drunk on duty (Uniform Code of Military Justice (UCMJ) Article 112) in February 2019; **(c)** received inpatient alcohol treatment from a civilian hospital from February to March 2019, where he was diagnosed with alcohol use disorder (severe, continued, with withdrawal, uncomplicated) and upon discharge, was advised to abstain from alcohol and attend outpatient treatment; **(d)** received outpatient alcohol treatment through the Army's Substance Use Disorder Clinical Care (SUDCC) from March 2019 to October 2019, where he was diagnosed with alcohol use disorder (severe) and advised to remain abstinent from alcohol and continue attending group and individual counseling; **(e)** was treated in an emergency room in July 2019, after drinking two 750 ml. bottles of alcohol over the course of two days; **(f)** was discharged from the Army in October 2019 for failing to successfully complete the SUDCC program; and **(g)** continues to consume alcohol against treatment advice and recommendations. (SOR ¶¶ 1.a-1.g)

I will address each alleged alcohol incident below:

Alcohol Treatment through ASAP in 2015.

In December 2015, Applicant was in a physical confrontation with another soldier who Applicant claims was drunk at the time. Applicant admitted consuming alcohol

before the altercation, but claimed he was not intoxicated. The military police responded and Applicant and the other soldier were taken to the station and wrote statements. His command became involved and Applicant claimed that in order to avoid discipline, he agreed to complete ASAP, which was a one-year course. No records are available concerning Applicant's participation in ASAP. Applicant testified that the program included group counseling once a week, individual counseling, regular alcohol testing, and an order to abstain while in the program. He claimed he was not aware that he received a diagnosis regarding his alcohol use. He also stated that he felt like he was just checking a box by participating in this program. (Tr. 24-29; SOR answer; GE 8, p. 3)

February 2019 Nonjudicial Punishment for Drunk on Duty (UCMJ Art. 112).

In February 2019, during a weekend before Applicant had duty, he drank enough alcohol so that when he showed up for a Monday physical training session with his unit, his first sergeant smelled alcohol on him. His first sergeant ordered Applicant to take a breathalyzer test, which showed a blood alcohol content of .08 ml. Applicant later admitted to his treating doctor that he drank a gallon of rum, followed by another fifth of a gallon of rum over the weekend before his Monday duty day. Based upon Applicant's, blood alcohol content, his commander punished him under Article 15 of the UCMJ for being drunk on duty. He pleaded guilty and was sentenced to restriction and extra duties for 45 days and a reduction in grade from E-5 to E-4. He received his punishment in July 2019 and was discharged from the Army in October 2019. (Tr. 30-31, 32; SOR answer; GE 2, p. 11, GE 4, p.1, GE 14)

Civilian Inpatient Alcohol Treatment From February 2019 to March 2019.

As a result of Applicant's showing up for duty while intoxicated, described above, he was also sent to Behavioral Health where he was enrolled in the Army's SUDCC program. In this case, he was sent to a civilian inpatient alcohol treatment program. The program lasted 28 days. He was admitted on February 27, 2019. He underwent an intake assessment the following day. This is when he told the treating physician about the amount of alcohol he consumed the prior weekend. The initial diagnosis given during his intake assessment was: alcohol use disorder, severe, continuous, with withdrawal, uncomplicated. (Tr. 32; SOR answer; GE 4)

Applicant completed the 28-day program and was discharged on March 27, 2019. His discharge summary written by his treating physician noted:

Patient participated in chemical dependency program and worked on his 12 steps. Patient completed 5 out of 12 therapeutic steps and a relapse prevention plan before discharge from the hospital.

The summary further stated:

It is worth noting, however, the patient's commitment to complete sobriety is very questionable. Patient told [treating physician] that he is not sure

whether he would stay compliant with treatment recommendations, although in the short-term he does not want to drink. . . He, however, also stated that this is just a blip that he does not see himself sober in the future. He thinks he would resume drinking at some point. (GE 5)

Applicant attended all his group sessions and did all his required homework. He declined an offer to have any medications prescribed for alcohol management. His discharge diagnosis was: alcohol use disorder, severe, continuous, with withdrawal, uncomplicated. (GE 5)

Outpatient Alcohol Treatment From March 2019 to October 2019 Through the Army's SUDCC program.

Applicant was placed in the Army's SUDCC outpatient program upon completion of his inpatient program. He began this program in March or April 2019. Applicant described the program as him attending group counseling sessions two times a week, alcohol testing once a week, and individual counseling once a month. He was required to abstain from alcohol in order to successfully complete the program. His counselor was a licensed mental health counselor (LMHC). According to Applicant's treatment records he was diagnosed with alcohol use disorder, severe. The records also indicated that Applicant admitted using alcohol on several occasions while in the program. He used alcohol on April 26, 2019. He admitted this use in a group session. He admitted using alcohol again on June 8, 2019, during a group session. In approximately July 2019, Applicant reported to his dietician that he was consuming a pint of liquor every workday and even more on the weekends. Records also show that he reported consuming alcohol in June and July 2019. (Tr. 35-37; GE 6-9, 12-13)

Medical Treatment in July 2019 in a Hospital Emergency Room After Drinking at Least Two 750 ml. bottles of alcohol over two days; and

Discharge from the Army for Alcohol Rehabilitation Failure in October 2019.

On September 24, 2019, Applicant's father passed away due to complications from alcohol abuse. In his SOR answer, he stated that the day following the news about his father, he had less than one drink while alone in his barracks room on an off-duty weekend. In his hearing testimony, he stated he bought a pint of rum and drank about half of it before his first sergeant showed up at his room. His first sergeant suspected that he had been drinking alcohol and took him to the hospital to have his blood drawn. Applicant acknowledged that event, but denied being intoxicated and to the contrary averred that his first sergeant was intoxicated. There is no information in the record concerning the result of this blood test or the amount of alcohol consumed. Applicant was discharged from the Army less than a month later. The basis for his discharge, as noted on his discharge certificate (DD-214) was Army Regulation (AR) 635-200, Chapter 9, which is titled "Alcohol or Other Drug Rehabilitation Failure." (Tr. 37-39, 41-42; SOR Answer, See AE B; GE 2, pp. 6-7)

Applicant Continues to Consume Alcohol Against Treatment Advice and Recommendations.

During Applicant's background interview with an investigator, in November 2020, he stated he no longer drinks alcohol. In his answers to DOHA interrogatories in July 2021, he stated he drinks two beers weekly, with his last consumption being on July 16, 2021. He further stated he did not intend to continue that rate of consumption. He also indicated that he becomes intoxicated when drinking three beers. The last time he was intoxicated was December 2019. He also answered that he never consumed alcoholic beverages before going to work, failing to list the February 2019 incident when he was charged with being drunk on duty and which led to his inpatient alcohol treatment. (GE 2, p. 7; GE 3, pp. 3-4)

Before Applicant was disqualified from the SUDCC program, it was recommended that he continue group counseling and forego use of any alcohol (substance). His discharge treatment plan included as an objective, "abstain from alcohol." (GE 8, p. 5; GE 11, p.5; GE 12, p.5)

Applicant currently drinks alcohol on his nonwork days and he also abstains from alcohol the day before his first work day of the week. He drinks approximately four to five vodka drinks per occasion. He claims to only drink at home, never out in public. He claims he does not drink to intoxication, but the last time he was intoxicated was in December 2022, when he was at a friend's house celebrating their birthdays, which fall on the same day. He claims he had no alcohol incidents before the Army and none after his discharge from the Army. He claims that alcohol is not important to his life. He has not seen a counselor about his alcohol use since he left the Army in October 2019. He has not attended any Alcoholics Anonymous (AA) meetings since leaving the Army. Applicant stated that alcohol has no meaning in his life, but he also stated that he enjoys drinking alcohol because it takes the edge off of things. He submitted a written letter of intent to "continue my modification of alcohol consumption." He also stated that if he chooses to drink alcohol, he will do it in a responsible manner. He owns his own home where he is the sole occupant. (Tr. 45, 47-49, 69, 71, 73-74; SOR answer, See AE D)

After considering all of Applicant's prior statements during his inpatient and outpatient treatment, as well as his statement to his background investigator, there are significant inconsistency between those statements and his hearing testimony. Overall, I did not find his testimony credible.

Character and Possible Mitigation Evidence.

Applicant presented eight character letters from supervisors, colleagues and friends. They describe Applicant as responsible and someone who is dedicated, hard-working, trustworthy, and who has high character. Several recommend continuation of his security clearance. Applicant also presented a professional certification, his 2021 civilian performance appraisal with an overall rating of "regularly exceeds expectations,"

and his 2018 Army fitness evaluation, indicating his overall “qualified” rating. (SOR answer, See AE A, E-F)

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:

(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;

(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;

(e) the failure to follow treatment advice once diagnosed; and

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

Applicant's excessive drinking while in the Army, which resulted in disciplinary action for being drunk on duty, his participation in both inpatient and outpatient alcohol treatment programs, and his failure to successfully complete his outpatient program, led to his discharge from the Army. Additionally, he was diagnosed by qualified medical professionals with alcohol use disorder and he failed to follow treatment advice and recommendations. The described record evidence supports the application of the above disqualifying conditions, except as they relate to SOR ¶ 1.a. Participation in alcohol treatment as alleged in SOR ¶ 1.a does not establish a disqualifying condition. Additionally, there was no evidence of the specific amount consumed by Applicant as alleged in SOR ¶ 1.e, and the evidence indicated this event occurred in September 2019, not July 2019, as alleged in SOR ¶ 1.e. For these reason, I conclude SOR ¶ 1.e is materially defective and find in favor of Applicant on that allegation. Having said that, the evidence does establish that Applicant consumed some amount of alcohol in approximately September 2019. This was his final alcohol-related action that culminated in his discharge from the Army for failure to complete his alcohol treatment program. I

will use this evidence as it may relate to credibility, mitigation, and the whole-person factors.

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 2019. This might be considered attenuated by time, but he continues to consume alcohol on a regular basis, which is contrary to his treatment recommendations. He claims he has modified his drinking pattern, however, his history of excessive drinking and his lack of credibility when describing his drinking patterns cause me to question the veracity of his claim. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply.

Applicant claims that he will drink alcohol responsibly in the future. His past history indicates otherwise. His treating physician during his inpatient treatment noted Applicant's "questionable commitment to sobriety." He failed to complete his outpatient treatment because he continued to consume alcohol. Since he left the Army, he has not sought counseling for his alcohol use, or attended any AA meetings. AG ¶¶ 23(b) and 23(d) do not apply.

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, his letters of recommendation, and his appraisals and certifications.

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 Guideline G, alcohol consumption.

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.b-1.d, 1.f-1.g:	Against Applicant
Subparagraphs 1.a, 1.e :	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.

Robert E. Coacher
Administrative Judge