



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



In the matter of:)
)
) ISCR Case No: 23-00208
)
)
Applicant for Security Clearance)

For Government: Brittany C. White, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2023

Decision

BENSON, Pamela, Administrative Judge:

Applicant failed to mitigate the alcohol consumption and criminal conduct security concerns. Not enough time has elapsed since he engaged in alcohol-related criminal behavior to show that future misconduct is unlikely to recur. Eligibility for access to classified information is denied.

Statement of the Case

On February 2, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct). The 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines G and J.

Applicant provided an undated response to the SOR and requested a hearing before an administrative judge (SOR response). The case was assigned to me on June 28, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 15, 2023, setting the hearing for October 12, 2023. The Microsoft Teams video-teleconference hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4. Applicant testified but did not offer any documents. The Government's proffered exhibits were admitted into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. DOHA received the hearing transcript (Tr.) on October 19, 2023. No post-hearing documentation was submitted, and the record closed on October 26, 2023.

Findings of Fact

Applicant admitted all allegations contained in the SOR. (¶¶ 1.a, 1.b, and 2.a.) Applicant's admissions are accepted as findings of fact. Additional findings follow. (SOR response)

Applicant is 27 years old. He earned a high school equivalency diploma in 2014. He never married, and he has one six-year-old son. In February 2022, he was hired by a DOD contractor as a security officer. In September 2023, he left that employment to work as a security officer for another DOD contractor. He is required to possess a security clearance to perform specific job duties for his employer. (Tr. 17-18; GE 1)

Alcohol Consumption and Criminal Conduct:

In December 2019, Applicant was arrested and charged with driving while intoxicated (DWI). He pled guilty to driving while ability impaired by alcohol (DWAI), and he was sentenced to complete an alcohol education program, was fined, and his driver's license was suspended for 90 days. (SOR ¶ 1.a) Applicant explained that on that occasion he had consumed about five mixed drinks. He was driven to a friend's house where he stayed overnight and slept on the couch. The next morning, he was driving home when he hit a patch of ice and the car slid into the front yard of a residence. The homeowners called the police. The police gave him a breathalyzer test and his results registered 0.14%, which was above the legal limit, and he was arrested. (Tr. 19-21, 29-30; GE 1, GE 2, GE 4)

In December 2021, Applicant was arrested and charged with felony DWI, driving on shoulder, lane violation, unlicensed driver, aggravated unlicensed operator, and failure to keep right. All charges were dismissed except for the DWI charge. He pled guilty to a misdemeanor charge of DWI, and he was required to undergo a substance abuse

evaluation, perform 60 hours of community service, and pay a fine. He was also sentenced to three years of probation that will end in September 2025. (SOR ¶ 1.b) Both SOR ¶¶ 1.a and 1.b were cross-alleged under Guideline J. (SOR ¶ 2.a) (Tr. 21-27; GE 1, GE 2, GE 3)

Regarding the December 2021 incident, Applicant testified that he had consumed approximately four glasses of wine and believed he was fully capable of driving himself home. He was crossing over the lanes on the two-lane road and was pulled over by police. His breathalyzer test registered 0.12%. He was not required to participate in an alcohol treatment program, but he does have to submit to alcohol screenings when he reports to his probation officer, and he could get a random alcohol screen test at his home. His driver's license was revoked for 18 months. He has complied with his sentence requirements, and he expects that he may be released early from probation in April 2025. His attendance for reporting to his probation officer is perfect, and his alcohol screenings have all been negative. He is required to remain abstinent from alcohol while serving on probation. Applicant stated he would be willing to submit supporting documentation while the record was held open, but he did not do so. (Tr. 21-27, 32)

Applicant testified that he has not consumed any alcohol for approximately the last year-and-a-half. He stays focused on work and stays busy. During his April 2022 background interview, he told the authorized DOD investigator that it would take four or five mixed drinks to get intoxicated, and he would get intoxicated one or two times a month. After his second alcohol-related arrest, he changed his drinking pattern. He was currently drinking once a month at home, and he would only drink two alcoholic beverages. During the hearing, Applicant stated that he would only drink alcohol for special occasions during the time following his arrest and court disposition, such as holidays and birthdays. After he was placed on probation in September 2022, he has maintained full sobriety. (Tr. 25-27; 31-34)

Policies

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 and mitigating conditions, which are useful 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. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 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 information.

Section 7 of Executive Order 10865 provides that an adverse decision 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 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 concern about 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 provides two conditions that could potentially raise a security concern and may be disqualifying as follows:

(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

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The record evidence establishes AG ¶¶ 22(a) and 22(c). Applicant was involved in two alcohol-related arrests in 2019 and 2021, and his breathalyzer recordings were well over the legal limit, registering 0.14% and 0.12%.

AG ¶ 23 lists four conditions that could mitigate security concerns:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant's two alcohol arrests are recent. During his April 2022 background interview, he admitted that he reduced his consumption of alcohol following his second arrest in December 2021, but he still continued to drink alcohol. It was not until he was ordered by the court to abstain from alcohol when he finally made the decision to stop drinking altogether. He has not participated in alcohol counseling or treatment. As of the date of his hearing, he is still on probation from his December 2021 arrest and conviction. He has not yet established a commitment to abstain or to use alcohol in moderation once his probation expires in 2025. Applicant has not met his burden of demonstrating clear evidence of successful rehabilitation. I conclude that the potentially mitigating conditions do not apply, and the alcohol consumption security concerns are not mitigated.

Guideline J: Criminal Conduct

The security concern related to the criminal conduct guideline 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 lists conditions that could raise a security concern and may be disqualifying. Two potentially apply:

(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

(c) individual is currently on parole or probation.

The record evidence establishes AG ¶¶ 31(a) and 31(c). Applicant was involved in two alcohol-related arrests in 2019 and 2021, and he is currently serving on probation from his most recent offense until September 2025.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

(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.

Applicant's criminal conduct raises serious security concerns. His recent alcohol-related arrests and his probation requirement to abstain from using alcohol until September 2025 shows that the court found his repeated criminal conduct concerning and his alcohol consumption warranted monitoring. He had a serious lapse in judgment when he was arrested a second time for driving under the influence of alcohol. Because he is still on probation, he cannot demonstrate clear evidence of rehabilitation. Not enough time has elapsed since he engaged in alcohol-related criminal behavior to show that future misconduct is unlikely to recur. As such, his criminal behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to establish mitigation under the above mitigating conditions.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) 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 must include an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G and J into my whole-person analysis.

The court sentenced Applicant to three years of probation, through September 2025. Despite his claimed compliance with his probation and some demonstrated rehabilitative progress, it is still too soon to make the necessary safe predictive judgments about the absence of any recurrent alcohol risks or criminal behavior. More time is required before Applicant can be considered successfully rehabilitated.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the alcohol consumption and criminal 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 J:	AGAINST APPLICANT
Subparagraph 2.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 security clearance. Eligibility for access to classified information is denied.

Pamela Benson
Administrative Judge