



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



In the matter of:)
)
-----) ISCR Case No. 22-00273
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2023

Amended Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, Applicant did not mitigate alcohol consumption and criminal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On January 19, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Services (CAS), successor to the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the alcohol consumption and criminal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR (undated) and requested a hearing. The case was assigned to me on July 4, 2023. A hearing was scheduled for September 26, 2023, by Teams Conference Services and was heard on the rescheduled date. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on his own testimony and no exhibits. The transcript (Tr.) was received on October 6, 2022.

Procedural issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with chips commemorating his sobriety and letters of support from his supervisors (past and present), family members, and others familiar with his lifestyle and changes he has made with his use of alcohol (inclusive of any medical updates addressing his progress with his continuing efforts to sustain his sobriety) (Tr. 49, 52) For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted,

Within the time permitted, Applicant emailed his post-hearing endorsements directly to Department Counsel without copying our hearing office. Department Counsel supplied Applicant's post-hearing submissions shortly following the expiration of the submission time allowance, but the submissions were inadvertently not picked up and added to our hearing file.

For good cause shown, I have reopened the record to admit without objection Applicant's post-hearing submissions. Applicant's submissions were received and marked as AEs A-F.

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) consumed alcohol, to the point of intoxication, since at least August 2009 until, at a minimum, August 2021; (b) received inpatient treatment at O Medical Center from about July 2021 to about August 2021 for a condition diagnosed as alcohol dependency, with a discharge prognosis as guarded and subject to instructions to attend 90 alcoholic anonymous (AA) meetings with an obtained sponsor following discharge (with three to five meetings thereafter), in addition to a year of aftercare; (c) received treatment at L Medical Center from about August 2017 to about September 2017 for a condition diagnosed as Alcohol Use Disorder (moderate to severe) with a prognosis at discharge of "fair to good"; (d) continued to consume alcohol not in accordance with his treatment advice; (e) was arrested in August 2012 and charged with Driving While Intoxicated (DWI); and (f) was arrested in August 2012 and charged with Driving under the Influence (DUI).

Under Guidelines J, and E, the allegations set forth in SOR ¶¶ 1.e and 1.f of Guideline G are incorporated under both Guidelines E and J. Additional allegations are covered by SOR ¶ 2.b to include Applicant's arrest and charge in another state in about August 2014 for assault on a family/household member.

In his response to the SOR, Applicant admitted all of the allegations made under Guidelines G and J, without any explanations or clarifications. Because he did not respond to the allegations advanced under Guideline E, the allegations will be entered as a denial. Further factual findings will be developed from the evidence presented in the record.

Findings of Fact

Applicant is a 35-year-old civilian employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (GE 1; Tr. 23, 52) He earned a high school diploma in May 2006 and a bachelor's degree in February 2013. He reported no military service (GE 1)

Since June 2019, Applicant has been employed by his current employer as an assembler. (GE 1) Between December 2013 and June 2019, he worked for other non-DoD employers in various jobs. (GE 1) He reported brief periods of unemployment between October 2011 and December 2013. Applicant has never held a security clearance.

Applicant's alcohol background history

Applicant's medical records reveal that he was introduced to alcohol at the age of seventeen. (GEs 1-6) Between August 2009 and August 2021, he consumed alcohol at times to excess and to the point of intoxication. (GEs 1-6) His drinking patterns during this period consisted of daily drinking (generally three beers a day), and multiple beers on the weekends (ranging between 18 and 30 beers). His drinking included assorted hard liquors as well. (GEs 2-3 and 6)

Between August 2009 and August 2012, Applicant was twice arrested for alcohol-related incidents. (GE 4; Tr. 24) Records document his arrest and charge in August 2014 for assault on a family/household member (his sister). (GE 5; Tr. 26-27) Applicant pled guilty to the assault incident and was fined \$700 and told by the court "to stay out of trouble." (GEs 2 and 6) The reported assault incident was non-alcohol related.

Faced with episodic depression and anxiety, Applicant self-referred himself to L Health System in August 2017 for counseling and treatment of a condition diagnosed as alcohol use disorder (moderate to severe). (GE 3; Tr. 33-34, and 40) During his 30-day inpatient stay, his treatment counselors addressed his diagnosed depression and alcohol issues with medications designed to mitigate his problems with these issues.

(GE 3) His inpatient treatment protocol included AA attendance (with some meetings reported by Applicant during his 30-day inpatient stay). (Tr. 36)

Applicant's L Health System discharge summary credited him with medical improvement in all of the areas addressed and confirmed a fair to good prognosis with recommended follow-up with his primary care health provider. (GE 3) For the ensuing two years following his discharge, Applicant retained his sobriety with the support of his family and stayed in compliance with the recommendations of his treatment providers. (GE 2; Tr. 36-37)

Following his L Health System discharge in September 2019, Applicant resumed his drinking during a family vacation. (GE 6; Tr. 36-37) Medical records document his return to drinking at daily levels in 2019. (GEs 2 and 6) In July 2021, he self-referred himself for inpatient treatment at a local medical center's (O Center) chemical dependency unit. (GE 2) His admission diagnosis was listed as alcohol abuse severe on the Axis 1 scale. See *Diagnostic and Statistical Manual of Mental Disorders*, American Psychiatric Association (5th ed., 2013) (DSM -5). His 30-day inpatient treatment protocol included individual and group therapy sessions and AA meetings. (Tr. 41-42)

Applicant was discharged from O Center's outpatient facility in August 2021 with a discharge diagnosis of alcohol dependency, depression by history, and nicotine dependency, all on the Axis I scale, and a listed prognosis of "Guarded." (GE 2) Discharge instructions for Applicant consisted of the following: Attend 90 AA/NA meetings in 90 days, with five meetings per week thereafter, attend aftercare sessions weekly for a minimum of one year, and obtain and utilize a sponsor. (GE 2; Tr. 55)

Once discharged from O Center, Applicant declined to pursue most of the recommended AA and aftercare participation (attending only a few AA meetings before suspending his AA participation). Citing his earned receipt of an AA chip commemorating his one-year of sobriety and his own assurances of his sustaining his sobriety for the previous two years, Applicant assured that his sobriety program was working for him. (GE 6)

Asked in his personal subject interview (PSI) by the interviewing investigator from the Office of Personnel Management about his post-O Center follow-up with recommended AA participation, Applicant replied that AA did not work out for him. (GE 6) He told the investigator that he has been able to control his urges to resume drinking with the support of his family, aided by lessons learned from his past experiences, and is no longer a risk to return to drinking. (GE 6) When he needs additional support to maintain his abstinence, he has his sister to turn to. (Tr. 54)

To his credit, Applicant contemporaneously self-reported his alcohol relapses to his supervisors with whom he has good working relationships. (Tr. 38-39) For his continuing efforts in achieving sustained sobriety, Applicant is entitled to considerable credit and encouragement. Applicant's sobriety assurances, while undoubtedly sincere have not been corroborated by any updated medical diagnoses and prognoses and other reliable sources to validate his continued abstinence assurances. Afforded post-

hearing opportunities to supplement the record with medical updates and other corroborating source materials, Applicant did not avail himself of the opportunity to do so.

So, while Applicant's abstinence assurances are both sincere and credible, they lack both documented updates from a substance abuse professional familiar with his drinking history, and endorsements from therapists, supervisors and coworkers, family, and friends positioned to address his progress in maintaining his sobriety. Without corroborating updates to validate his abstinence claims, favorable inferences of recovery from a history of alcohol abuse cannot be made at this time.

Endorsements

Applicant is highly regarded by his supervisors (past and present) and family members who attest to his honesty, exemplary work ethic, and overall good character. (AEs A-F) His supervisors (both previous and current) credit Applicant with being a motivated, punctual, trustworthy, and devoted to the goals of his team. (AEs D-E) Colleagues who have worked with him with devotion to his work and team. (AE F)

Close family members attested to his pursuing wise counsel to help him with healing spiritually, mentally, and emotionally. (AEs A-C) All of his family members (father and siblings) expressed pride in Applicant and his accomplishments). However, none of his submitted character references expressed any specific knowledge of his problems with alcohol abuse or what he is doing to sustain his sobriety..

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as

considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Alcohol Consumption

The Concern: 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 ¶ 21.

Personal Conduct

The Concern: 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 and adjudicative processes . . . AG ¶ 15.

Criminal Conduct

The Concern: 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 ¶ 30.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a disqualifying condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant's multiple years of alcohol abuse (to the point of intoxication) and alcohol-related arrests, interspersed with brief periods of abstinence and relapses, that required both inpatient and outpatient counseling and treatment to stabilize him and ween him away from the cycles of recurrent alcohol abuse associated with his episodic periods of depression and anxiety. Additional security concerns are raised over a single non-alcohol arrest and charge in 2014 for assault with a family member (his sister).

On the strength of the evidence documented in the record, five disqualifying conditions (DCs) of the alcohol consumption guideline apply. DCs ¶¶ 22(a), “alcohol-related incidents away from work, such as driving 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”; 22(c), “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol abuse disorder”; 22(d), “diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed social worker) of alcohol use disorder”; 22(e), “the failure to follow treatment advice once diagnosed”; and 22(f), “alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder,” are all applicable to the facts of record in Applicant’s case.

By recognizing his mistakes in judgment associated with his recurrent periods of abusive drinking (even after receiving counseling and treatment for abusing alcohol), Applicant’s abusive drinking is extenuated in considerable part by his encountered difficulties in maintaining his sobriety for more than two years at a time, attributable to onsets of episodic depression and anxiety issues. Based on the evidence presented, Applicant may take partial advantage of two mitigating conditions (MCs). MCs ¶¶ 23(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”; and 23(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,” apply to Applicant’s situation in this case.

Cross-alleged under Guideline E are Applicant’s Dwl and Dul incidents of 2009 and 2012, respectively. Both of these incidents occurred over 10 years ago and at a time when Applicant was abusing alcohol on a daily basis. These alcohol-related incidents are fully covered by Guideline G and do not share any independent significance under Guideline E. Because of the addition of Applicant’s non-alcohol-related arrest and charge of assault on his sister, Applicant’s two Dul incidents and non-alcohol-related incident can be considered together as a pattern of minor expenses that retains independent significance in need of separate addressing under Guideline J. Applicable to this August 2014 arrest is DC ¶ 31(a), “a pattern of minor offenses, any one of which on its own would be unlikely to effect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, and trustworthiness.”

Based on the composite of corrective actions he has taken since he last consumed alcohol in 2021, Applicant can be credited with making considerable progress in the management of his mental health and alcohol intake since his discharge from O Center in September 2021. However, validation of his maintaining his sobriety over the past two years cannot be accepted on the basis of his assurances alone.

Before he can be fully cleared of relapse risks, both letters of support and an updated diagnosis and prognosis are needed to clear away any doubts about his recurrence risks. Offered an opportunity to provide medical updates and endorsements from therapists, supervisors, coworkers, family, and friends who are familiar with his past alcohol issues and his progress in avoiding alcohol over the past two years, Applicant furnished strong post-hearing endorsements of his character and trustworthiness. None of his references could attest to his past problems with alcohol abuse and what steps he is currently taking to maintain his sobriety and satisfy the post-discharge recommendations of his O Center treating professionals.

Episodic periods of depression and anxiety that affected Applicant and influence his recurrent turn to drinking are clearly extenuating and mitigating. However, the circumstances that prompted him to return to abusive drinking to self-medicate his emotional issues are not enough to relieve him of his responsibilities of satisfying the post-discharge recommendations of his O Center treating professionals. Without an updated diagnosis and prognosis from an aftercare therapy group, Applicant's abstinence assurances cannot be solely relied upon at this time that Applicant can (a) maintain his established abstinence regimen and (b) is at no material risk to return to alcohol abuse in the foreseeable future.

By contrast, Applicant's two Dwl and Dul offenses and non-alcohol-related assault offense involve considered minor offenses that taken together reflect mistakes of judgment that have not recurred since the last reported incident of August 2014. While Applicant's alcohol issues retain continuing security concerns, he has learned enough from his past mistakes of judgment to present little risk of recurrent criminal arrests. Applicable to Applicant's situation is MC ¶ 32(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."

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of recurrent alcohol abuse is incompatible with his holding a security clearance. Since his discharge from counseling and treatment from O Center in 2021, he has made considerable progress in managing his alcohol-related issues and shows good promise in sustaining his abstinence in the future. He deserves considerable credit as well for his contributions to the defense industry. Updates are needed (both personal and professional) to verify and corroborate his progress. Based on the evidence presented, it is still too soon to absolve him of risks of recurrence based on the developed record.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude alcohol consumption concerns are not mitigated. Personal conduct and criminal conduct concerns are mitigated. Eligibility for access to classified information is denied

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:

GUIDELINE G (ALCOHOL CONSUMPTION):	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
GUIDELINE J (CRIMINAL CONDUCT):	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
GUIDELINE E (PERSONAL CONDUCT):	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.

Roger C. Wesley
Administrative Judge