



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



In the matter of:)	
)	
)	ISCR Case No. 22-01195
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: Christopher Czaplak, Esq.

12/06/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the alcohol consumption security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 19, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). Applicant responded to the SOR on August 17, 2022 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2023.

The matter was originally scheduled for hearing on November 2, 2023. At Applicant's request and without objection, I continued the original hearing date. The hearing was convened as rescheduled on November 7, 2023. I admitted Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A and B in evidence without objection. At Applicant's request, I left the record open for the parties to provide post-hearing documents. Applicant timely provided a post-hearing document that I admitted

in evidence without objection as AE C. I received a transcript (Tr.) of the hearing on November 14, 2023.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He has worked for his current employer since about February 2015. He earned a high school diploma in 1982 and a bachelor's degree in 2014. With the exception of about a year-and-a-half in 1987, Applicant served on active duty in the Navy from 1983 until he retired in 2009, earning an honorable discharge. He was married from 1994 until a divorce in 2015. He remarried in 2015. Between him and his current wife, he has five adult children and five grandchildren. (Tr. 20-27, 40-41; Answer; GE 1, 2, 5, 6; AE B)

In about May 2004, Applicant was arrested and charged with driving under the influence of alcohol (DUI) in State A after drinking at a friend's house and deciding to drive home. He was arrested at about 3:00 a.m. after police pulled him over for speeding. He was convicted of DUI. He was sentenced to 30 days in jail, which were all suspended. His driver's license was suspended for a year. He claimed that, at that time, he associated with a group of sailors who drank a lot and enjoyed going to bars and clubs. He claimed that he no longer associates with that group of people. He was required to attend State A's alcohol safety action program (ASAP). He reported this arrest on his 2021 Electronic Questionnaires for Investigations Processing (2021 SF 86) and on his 2015 Electronic Questionnaires for Investigations Processing (2015 SF 86). He also claimed that he immediately reported the DUI to his chain of command. After being arrested, he claimed that he modified his drinking behavior for an unspecified period of time. (Tr. 27-29, 41-46; Answer; GE 2, 3)

Applicant was arrested in July 2009 in State A and charged with DUI, second offense, BAC 0.15 and 0.20%, after police pulled him over for speeding at about 2:00 a.m. He had too much to drink after going to several bars over the course of an evening, yet he decided to drive home. Police administered him a breathalyzer test and the result indicated that he had a 0.17 percent blood alcohol content (BAC). He pleaded guilty to a lesser DUI offense and served 10 days in jail. He was placed on probation until 2013 and his license was suspended for a year. His command gave him a Captain's Mast and the Navy out-processed him but allowed him to take full retirement based upon his past military record. (Tr. 29-31, 49-62, 75-76; Answer; GE 1-6)

Applicant reported this arrest on his 2021 SF 86 and on his 2015 SF 86. He was once again required to complete State A's ASAP program. He also attended and completed an outpatient substance abuse program from September 2009 until January 2010 and attended Alcoholics Anonymous (AA) meetings intermittently from September 2009 until September 2012. While he claimed that he was never told to abstain from alcohol, he did abstain from it from 2009 until 2014. He also claimed that he stopped associating with the same crowd with whom he drank alcohol. (Tr. 29-31, 49-62, 75-76; Answer; GE 1-6; AE C)

In about 2014, Applicant began consuming alcohol again. He claimed he would have a drink or two at lunch or dinner. He claimed he drank about six to eight beers per month. During an August 2015 interview with a DOD investigator, Applicant told the investigator that he had modified his drinking habits by no longer drinking to the point of intoxication, and he no longer associated with the same crowd who liked to go out and party. He also told the investigator that he did not foresee having additional DUIs. However, in June 2021, he was arrested in State B and charged with DUI, .16 (percent) or higher. Earlier that night, after working late, he had about five drinks over three-and-a-half hours with dinner. Afterwards, he drove to a karaoke bar and drank more there. Despite drinking too much, he left the karaoke bar at about 3:30 a.m. to drive home, but police pulled him over for driving erratically, speeding, and failing to use his turn signal. He failed a field sobriety test and was given a breathalyzer. His breathalyzer test result indicated that he had a 0.16 percent BAC. The DUI charges were ultimately dismissed for an alleged lack of evidence, but he pleaded guilty to a lesser charge of careless driving. He was required to pay a \$400 fine. (Tr. 32-35, 61-65; Answer; GE 3-6)

Applicant claimed that after his June 2021 arrest, he had a “reset,” but he still consumes alcohol and has a drink or two with dinner. He testified that he still drives after consuming alcohol, but he does not drive if he has had more than one drink. He claimed that if he has had more than one drink, his wife drives home from dinner. He testified that he has not driven while intoxicated since June 2021 and that was the only time he did so in the last 10 years. He claimed that his social circle now consists of mostly extended family who are not big drinkers or bargoers. He also claimed that he drinks less because he has health issues that are exacerbated by drinking too much alcohol, he wants to keep his job, and he wants to have a healthy retirement. (Tr. 32-36, 38-40, 66-69; Answer; GE 6)

Applicant claimed he has not been diagnosed as alcohol dependent or as an alcoholic. Applicant claimed that no alcohol counselor or medical professional has advised him to stop drinking. On October 24, 2023, Applicant had a consultation with a counselor who holds a master’s degree in counseling education and is a licensed professional counselor. After this consultation, the counselor diagnosed Applicant with Alcohol Use, Mild, in sustained remission. He then underwent at least one other session with the same counselor. The counselor made no recommendation regarding Applicant abstaining from alcohol. (Tr. 31, 75-76; AE C)

While he was in the Navy, Applicant earned the Meritorious Service Award, which he claimed is not normally awarded to an enlisted servicemember. He deployed to a combat zone for about ten months beginning in October 2007. He retired from the Navy as an E-8, which is the second highest enlisted pay grade available. He has received praise from his supervisors and customers regarding his work performance. His colleagues, friends, and family have written character-reference letters advocating that he be awarded a security clearance and attesting to his good character, trustworthiness, reliability, and patriotism. His spouse also wrote that she does not think he has a problem with alcohol and that he is merely a social drinker. In contravention of Applicant’s testimony, she claimed that he does not drive after he has been drinking. (Tr. 24-25, 36-37; Answer; AE A, B)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(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."

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern for alcohol consumption is set out in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

(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.

Applicant was arrested and charged with DUI in 2004, 2009, and 2021 after drinking too much and deciding to drive. The above-referenced disqualifying conditions are established and the burden shifts to Applicant to provide evidence in mitigation.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

(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.

On at least three occasions over a span of about 17 years, Applicant has consumed far too much alcohol, made the decision to drive, and been arrested for DUI. Although it has been about two years since Applicant's most recent alcohol-related arrest, his pattern of problematic impaired driving, with gaps of five to eight years in between incidents, casts doubt on whether these incidents are likely to recur. Moreover, he continues to drive after drinking. He claimed that he has modified his alcohol intake and no longer associates with people who drink a lot; however, he made these claims prior to his latest DUI. For these reasons, he has not met his burden to show that the behavior is unlikely to recur. He also has not met his burden of showing that he has demonstrated a clear and established pattern of modified consumption. AG ¶¶ 23(a), 23(b), and 23(d) do not apply.

Applicant went to a treatment or counseling program, but he subsequently drove after drinking too much and was again arrested for DUI. AG ¶ 23(c) does not apply. Applicant did not mitigate the alcohol consumption security concerns.

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) 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 have incorporated my comments under Guideline G in my whole-person analysis. I have also considered Applicant's lengthy, honorable military service, his deployment, his positive character evidence, and his good employment record. However, I find that the totality of the evidence, including his DUIs, his willingness to continue to drink and drive, and his failed efforts to effectively modify his alcohol consumption in the past leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the alcohol consumption security concerns.

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.a-1.c:	Against Applicant

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge