



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



In the matter of: )  
)  
) ISCR Case No. 22-02396  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
For Applicant: *Pro se*

01/08/2024

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the alcohol consumption security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 23, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). On an unspecified date, Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2023.

The hearing was convened as scheduled on December 12, 2023. I admitted Government Exhibits (GE) 1 through 4 and Applicant Exhibits (AE) A and B in evidence without objection. I received a transcript (Tr.) of the hearing on December 20, 2023.

## Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. He has worked for his current employer since about October 2016. His employer has promoted him twice. He earned a high school diploma in 2001. He has been married since 2010. He has four children, ages 22, 20, 12, and 10. He has held a security clearance since August 2017. (Tr. 20-21, 41-42; GE 1, 2)

In about March 2004, when Applicant was 20 years old, he was arrested and charged with driving while intoxicated (DWI) in State A after drinking too much at a friend's house and deciding to drive back to his father's house. He was arrested after police pulled him over for weaving and crossing the center line on the road. He failed a field sobriety test. He also had a warrant for his arrest for not having a valid vehicle inspection. Police took him to a detention center where they administered him a breathalyzer test and the result indicated that he had a 0.108 percent blood alcohol content (BAC). He pleaded *nolo contendere* to the charge. He was sentenced to 18 months of community supervision, had to attend an alcohol awareness course, and his license was suspended for a year. He reported this arrest on his 2021 Electronic Questionnaires for Investigations Processing (SF 86). (Tr. 17-18, 21-28; Answer; GE 1, 2, 4)

After his 2004 DWI arrest, Applicant contacted the DMV in State A to determine the requirements to have the restrictions removed from his driver's license. His understanding of the information that the DMV provided him was that he had to pay fees. After he paid those fees, he thought he was permitted to drive. However, in 2005, police pulled him over for driving with an invalid license. He had only removed two of the three suspensions that had been placed on his driver's license. As a result, he spent a day in jail and had his period of community service extended. However, he soon thereafter completed all the requirements of the sentence from his 2004 DUI and was able to have his driver's license fully reinstated. (Tr. 25-28; Answer; GE 1, 2, 4)

From 2005 until April 2021, Applicant did not engage in any disqualifying conduct with alcohol, nor did he engage in criminal conduct. However, in April 2021, he was arrested in State A and charged with DWI, second offense, after he was involved in a minor, single-vehicle accident. He had five beers at a golf driving range and decided to try to drive home despite having had too much to drink. While testifying, he clarified without being asked that the beers he drank were not normal size beers but were "large" beers. While driving, he took his eyes off the road to check driving directions on his phone, hit a curb, and hit his head against the steering wheel, dazing himself. Police arrived at the scene and took him to the hospital where he consented to a blood draw. He does not recall his BAC percentage, but knows it was over the .08 legal limit. After treatment at the hospital, he spent a night in jail. (Tr. 17-18, 28, 33-36; Answer; GE 1-3; AE A)

While Applicant was awaiting trial, at his attorney's suggestion, he attended and completed a 32-hour alcohol repeat-offender program and a Mother's Against Drunk Driving (MADD) victim-impact panel. As he had completed these courses, and given the

17-year period between his alcohol-related charges, the judge convicted him of the reduced charge of first-offender DWI. He was placed on probation until August 2024 and his license was suspended for a year. He reported this arrest on his SF 86 and told his employer and FSO about it. (Tr. 35-37, 47-48; Answer; GE 1-3; AE A)

Applicant suffered significant childhood trauma. In early 2021, when his own son reached the age where Applicant began suffering said trauma, he began to experience renewed mental anguish from it. He did not know how to deal with his feelings and internalized them. He and his wife began having marital problems, and he engaged in the conduct that resulted in his April 2021 arrest during this time. He claimed that this arrest was a wakeup call to get help for himself and his marriage. In May 2021, he began psychotherapy that he has continued up to the date of the hearing. His counselor holds a master's degree in counseling education and is a licensed professional counselor. She opined that he has been learning healthy coping skills and has been receptive and cooperative during the therapy process. She does not believe that he has a substance-use disorder. Applicant plans to continue with this treatment. (Tr. 18-19, 29-39, 43-47; Answer; GE 1, 2; AE A)

After his 2021 arrest, Applicant and his wife have attended marital counseling and his marriage is in a much better place. Prior to his arrest, he had not shared his childhood trauma with his wife, but he has since. He has discussed it with her and with his family. He feels much better after attending psychotherapy and has learned better coping mechanisms. He also attends church-organized group self-improvement sessions for his betterment three times per week. While he has not been diagnosed with a substance-use disorder, he has abstained from alcohol since the day of his April 2021 arrest. He plans to continue his abstinence. He claims that he does not need alcohol to enjoy himself and it has only brought him trouble. (Tr. 18-19, 37-48; Answer; GE 1, 2; AE A)

One of Applicant's colleagues, a supervisor, and a friend have written character-reference letters advocating that he be awarded a security clearance. They have also attested to his good character, trustworthiness, and reliability. (AE 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 DWI in 2004 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; 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.

While Applicant showed poor judgment by drinking to the point of intoxication and driving on two occasions, he also has provided sufficient evidence that he has learned from his mistakes. He was contrite and remorseful for his actions and backed those sentiments up with action. While he has not been diagnosed with a substance-use disorder, he has not consumed alcohol since his DWI in April 2021. He credibly testified that he does not plan to drink alcohol again. He has sought and is attending treatment from a qualified professional for the significant childhood trauma from which he suffered that contributed to his alcohol consumption. He is undergoing marital counseling to better cope with these issues. He complied with all the terms of his sentencing for his DWIs, including completing a 32-hour alcohol repeat-offender program and a Mother's Against Drunk Driving (MADD) victim-impact panel. He also has attended self-improvement groups several nights per week at his church. His two DWIs no longer cause me to question his reliability, trustworthiness, and judgment. All

the above-referenced mitigating conditions apply, and the Guideline G security concerns are mitigated.

### **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 positive character-reference evidence. I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Benjamin R. Dorsey  
Administrative Judge