



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



In the matter of:)	
)	
)	ISCR Case No. 23-01147
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. Eligibility for access to classified information is denied.

Statement of the Case

On July 19, 2023, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 25, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on September 5, 2023. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not respond to the FORM, provide documentary evidence, or object to the Government's evidence. Items 1 through 6 are admitted in evidence. The case was assigned to me on November 30, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He married in 2011 and divorced in 2014. He remarried in 2016. He has two children from this marriage, ages seven and five. He completed a security clearance application in March 2019. In it, he disclosed that he enlisted in the military in 2000 and he was currently on active duty. The FORM does not list a date of discharge. The evidence provided shows that he was administratively processed for separation in August 2017. Based on information in the FORM, it appears he was still on active duty in 2019. It is likely he was retained in the military and permitted to retire when he became eligible. He is being sponsored for a security clearance by his current employer, a government contractor.

The SOR alleged and Applicant admitted the following:

1.a: Arrested and charged with driving under the influence (DUI) of alcohol in October 2009.

1.b: Received treatment at a Substance Abuse Rehabilitation Program (SARP) from May 2014 to June 2014 and was diagnosed with alcohol use disorder, severe.

1.c: Arrested and charged with DUI in January 2017.

1.d: Received treatment at SARP from March 2017 to April 2017 and was diagnosed with alcohol use disorder, severe.

1.e: Charged with violations of the Uniform Code of Military Justice (UCMJ) Articles 86, 107, and 134 for providing a false official statement and failing to report to place of duty due to excessive alcohol consumption in July 2017.

1.f: Received treatment at behavioral health clinic from April 2019 to May 2019 and was diagnosed with alcohol use disorder, severe.

1.g: Received treatment at [X] Hospital from September 2019 to December 2019 and was diagnosed with alcohol use disorder, severe.

1.h: Continued to consume alcohol excessively and to the point of intoxication until July 2022, notwithstanding being diagnosed with alcohol use disorder, severe on several occasions.

Applicant completed government interrogatories in June 2023 and affirmed statements he made to a government investigator in May 2019. He acknowledged he had been arrested in 2009 for DUI. He said he had been drinking at a bar with friends and when he was driving home, he was stopped by the police. He was charged with DUI. He was convicted and received a fine and his license was suspended. He completed a first offender program and was on probation for three years. He did not have to report to a probation officer. He completed his probation. (Items 3, 5)

Applicant told the government investigator that in about 2012 he began consuming alcohol almost daily and then started to binge drink three to five days a month. He said that alcohol began impacting his life negatively in about 2014. He would consume it alone at home and would drink 10 or more glasses of whiskey. He attributed his alcohol issues to post-traumatic stress disorder (PTSD). He told the investigator that he was unaware at the time that alcohol was impacting his life. He disclosed that he participated in alcohol counseling and treatment and was professionally diagnosed as an alcohol abuser and alcohol dependent. (Item 3)

Applicant said that in May 2014, he voluntarily sought alcohol treatment because he was drinking almost daily for about a year and a half to deal with his PTSD. He went to the substance abuse office, and he was screened and diagnosed with alcohol use disorder, severe and was referred to a rehabilitation program. The qualification of the person who diagnosed him is unknown. He participated in the rehabilitation program for 35 days and then was transferred on orders to a new duty station. (Item 3)

Applicant disclosed that he was arrested for DUI in January 2017 after he had been consuming alcohol in the barracks and left to get some food. He fell asleep in the drive-thru of a restaurant. Military police responded and his breathalyzer results were .24%. Applicant was attending a military training course at the time and was told he would fail it due to the incident. He went back to his barracks and continued to consume alcohol. He failed to report to his assigned duty the next day and his command took him to the hospital where he was placed in the detoxication unit for five days. He was then screened and diagnosed with alcohol use disorder-severe and was an inpatient at the Substance Abuse Rehabilitation Program for 35 days. The qualifications of the person who diagnosed him are unknown. He completed the program and returned to his unit. His DUI was dismissed in court. (Items 3, 5, 6)

Applicant disclosed that in July or August 2017, he went to UCMJ Article 15 nonjudicial punishment (NJP) for failing to report to duty, providing a false official statement, and because he was too drunk to go to work (Articles 86, 107 and 134). He explained that he was drinking into the early morning hours and was drunk when he woke up. He called his command and told them he was having car troubles. He was staying at a hotel at the time because he was transferring duty stations. He was supposed to check

out of the hotel the next day. When he failed to do so, the hotel owner contacted his unit. Military personnel arrived to do a wellness check. They learned Applicant had lied to the command. Applicant provided a letter to his command to be considered at his NJP. In it, he said he had to do better, and that he had completely abstained from alcohol consumption and was attending AA at least five days a week. He was working the 12-step AA program and had a sponsor. He was also seeing a counselor and a psychiatrist. At NJP, Applicant received restriction and forfeitures, both of which were suspended. (Items 3, 5)

Applicant told the investigator that in April 2019 he voluntarily sought alcohol treatment because he continued to consume alcohol. He said since 2017 he had been binge drinking three to five days a month. He saw a military mental health professional who diagnosed him with alcohol disorder-severe with PTSD symptoms. He was referred to a civilian mental health clinic. He said he saw a doctor there and completed treatment in May 2019. He told the investigator that it was unlikely that he would ever consume alcohol again because of its negative impact on his life. He said he had gone to counseling and rehabilitation, and he and his wife no longer purchase alcohol. (Item 3)

Applicant completed another set of interrogatories in March 2023. In them, he disclosed that he does not currently consume alcohol and his last consumption was the week of July 25-29, 2022. He said he had five drinks. He said he no longer enjoys consuming alcohol in any setting and does not enjoy the taste or its effects. He disclosed he was taking medication to help him abstain from alcohol consumption. He did not provide any specific information about the type of medication, who prescribed it, and how long he has been taking it. He did not intend to consume alcohol in the future. He disclosed his last blackout was in August 2021. He disclosed his 2014 and 2017 inpatient treatments for alcohol use disorder and was advised as part of his aftercare to attend Alcoholics Anonymous (AA) and check in with the substance abuse counselor once a week for a year. He further disclosed that from September 2019 to December 2019, he received treatment and was diagnosed with alcohol use disorder-severe. He was advised to attend AA and check-in with his substance abuse counselor once a week for a year. He said he complied with the requirements. He did not provide any documents to support his statements.

Applicant did not provide a response to the FORM or any corroborating documents from mental health professionals about his diagnoses of alcohol use disorder. He did not provide information about whether he currently attends AA and if he has a sponsor. He did not provide an update about his sobriety.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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 concerns for 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 security concerns and may be disqualifying. I find the following to be potentially applicable:

- (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;
- (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 others, regardless of whether the individual was 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; and
- (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.

The evidence supports that Applicant was unable to go to work because he was drunk and lied about it to his command. There is no evidence he was intoxicated at work. He was arrested and charged with DUI in 2009 and 2017. He was convicted of the 2009 DUI. There is sufficient evidence that Applicant drank habitually and was binge drinking. He received inpatient treatment and was diagnosed with alcohol use disorder-severe in 2014, 2017 and twice in 2019. It is alleged and Applicant admitted that each time he received inpatient treatment he was diagnosed with alcohol use disorder-severe. However, no information was provided as to who made the diagnoses and their qualifications, except when he was diagnosed in April 2019 by a military mental health professional. I find there is sufficient evidence to conclude this person who was associated with the substance abuse treatment facility was qualified to provide this diagnosis. In addition, although it may be a somewhat obvious recommendation that Applicant abstain from alcohol consumption, there is no evidence that he was told to do so as part of his aftercare. AG ¶¶ 22(a), 22(c), and 22(d) apply.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 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;

(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 has a long history of alcohol abuse. He participated in and completed inpatient alcohol treatment four times since 2014, including twice in 2019. In his 2017 letter to his command before going to NJP he said he stopped consuming alcohol and was attending AA. He continued to consume alcohol. After being interviewed by a government investigator in May 2019 and stating he no longer consumed alcohol and had no intention of doing so in the future, he was admitted for inpatient alcohol treatment. The evidence does not support that he has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. He did not provide current information that he is participating in counseling, treatment or attending AA. The evidence supports that he has a history of receiving treatment and then relapsing. Although, he acknowledges his problems with alcohol, he has not provided sufficient evidence of actions taken to overcome the problem. He has been suffering for years with alcohol issues and based on his history, it is likely to recur. Although, Applicant stated in his interrogatories that he has not consumed alcohol since 2022, he did not provide updated information about his sobriety. In addition, based on his repeated relapses, even if this statement is accurate, it is too soon to conclude another relapse is unlikely to recur. I find none of the mitigating conditions 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 have incorporated my comments under Guideline G in my whole-person analysis.

Applicant failed to meet his burden of persuasion. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline G and evaluating all the evidence in the context of the whole person, I conclude Applicant failed to mitigate the security concerns under the alcohol consumption guideline.

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.h:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge