



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



In the matter of:)	
)	
)	ISCR Case No. 22-01853
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

02/07/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline J, criminal conduct and Guideline G, alcohol consumption. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On October 26, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J and G. The DOD acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on February 23, 2023, and requested a hearing. Within his answer, he attached exhibits, which will be referred to as Applicant Exhibits

(AE) A-T. Department Counsel objected to Answer Exhibit J for foundational reasons. That objection was overruled. I will consider all these exhibits as part of Applicant's answer. The case was assigned to me on September 20, 2023.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 5, 2023, and the hearing was held as scheduled on November 6, 2023. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list and disclosure letter were marked as hearing exhibits (HE) I and II. Applicant testified and offered one exhibit at the hearing. I referred to this as AE A at the hearing, I am remarking this as AE U. It was admitted without objection. In a timely post-hearing submission, Applicant offered documents that I marked as AE V-W, which were admitted without objection. DOHA received the hearing transcript (Tr.) on November 15, 2023.

Findings of Fact

In Applicant's answer, he admitted some of the SOR Guideline J allegations, with explanations, (SOR ¶¶ 1.a-1.c, 1.e-1.f) and denied others (SOR ¶ 1.d). He admitted the Guideline G allegations, with explanations, consistent with his Guideline J answers (SOR ¶¶ 2.a-2.c). His admissions are adopted as findings of fact. After a thorough and careful review of the testimony, pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 40 years old. He married in 2021, after a 15-year courtship. He has no children. He is currently employed by a government contractor, where he has worked for approximately two years. He holds two associate degrees and a bachelor's degree. This is his first application for a security clearance. (Tr. 6, 20, 28; GE 1; AE K-L)

Under Guideline J, the SOR alleged Applicant was charged with alcohol-related criminal offenses on six occasions: (1) in November 2003, he was charged, convicted and sentenced for driving under the influence of alcohol (DUI); (2) in March 2011, he was charged with DUI and refusal to take a chemical test for alcohol, for which he was convicted and sentenced; (3) in August 2011, he was charged with DUI, which charge was dismissed; (4) In December 2013, he was charged with intoxication and criminal trespass, for which he was convicted on the intoxication charge and sentenced; (5) in September 2017, he was charged with public intoxication, which charge was dismissed; and (6) in June 2020, he was charged with intoxication, which charge was reduced to disorderly conduct as part of a plea in abeyance. (SOR ¶¶ 1.a-1.f)

Under Guideline G, the SOR: (1) cross-alleged the Guideline J allegations above; (2) alleged that Applicant consumed alcohol to the point of intoxication, at various times, from 2003 to September 2022; and (3) alleged that he was court-ordered to attend substance-abuse outpatient counseling from August 2011 to about February 2012. (SOR ¶¶ 2.a-2.c)

Applicant began drinking alcohol when he was 18 or 19 years old, in about 2001 to 2002. He did this to socialize with friends. Starting in about 2010, he would consume about a six-pack of beer or a few shots at social gatherings. During this time, he would typically drink to intoxication. He would become intoxicated after drinking four to six beers, or three glasses of wine. He became louder and less inhibited when he was intoxicated. During the end of his college days in 2015, he was drinking 8-12 beers a day, four to five days a week. In 2022, he was consuming one to two glasses of wine one to two times a week, and one to two bottles of wine over the weekend with his wife. He testified that his current consumption of alcohol is “a few beers, here and there on weekends with my wife.” (Tr. 20; GE 2)

The details of his arrests and alcohol consumption of concern follow:

June 2020 Intoxication Charge (SOR ¶ 1.a)-Applicant had an argument with his fiancée (now wife) and left his home to go drink at a bar. During his statement to an investigator, he claimed he drank three beers and two shots in a three-hour period. During his hearing testimony, he stated he drank five to six beers on that occasion. He became loud and disruptive and the police were called. He was arrested and taken to jail, where he was released the next day. A plea agreement was reached and the intoxication charge was dismissed and he pleaded to a disorderly conduct charge, which was held in abeyance for a year. He completed the year without any violations and the disorderly charge was dismissed. (Tr. 33-34; GE 1-2; SOR answer; AE I)

September 2017 Intoxication Charge (SOR ¶ 1.b)-During his background investigation, Applicant admitted being at a bar from about 10 pm to 11 pm. He consumed two to three pitchers of beer. He left the bar and someone from the bar called the police registering a noise complaint. The police arrived and gave him a ride to his home. He was later cited for intoxication. The citation was dismissed for lack of evidence. (GE 2; SOR answer)

December 2013 Intoxication and Criminal Trespass (SOR ¶ 1.c)-During his background investigation, Applicant admitted that he had been drinking 8 to 10 beers at his home when he decided to walk to a local store to purchase more beer. At the store, he encountered people outside who he believed were selling drugs. He confronted the people and eventually the police were called. When the police arrived, he was arrested for being intoxicated. He pleaded no contest to the intoxication charge and the criminal trespass was dismissed. He was also ordered to undergo an alcohol evaluation. He participated in an evaluation in April 2014, and no program referral was recommended. (GE 2; SOR answer; AE H)

August 2011 DUI (SOR ¶ 1.d)-Applicant denied this arrest in his answer and there is no discussion of this incident during his background interview. An FBI report supports that this incident related back to his March 2011 arrest, *infra*, and was not an independent charge. I find for Applicant on this allegation. (GE 2-3; SOR answer)

March 2011 DUI and Refusal of Chemical Testing (SOR ¶ 1.e)-Applicant and a friend went to a club in March 2011. Applicant drank several beers and had some shots before leaving the club. Applicant was driving and was stopped immediately upon leaving the parking lot by law enforcement. Applicant was told the reason for the stop was because he spun his tires coming out of the parking lot. He refused a breathalyzer test at the scene and was subsequently arrested on suspicion of DUI. Blood was later drawn from him. The results of the blood test are not in the record. He was charged with DUI and pleaded guilty to the charge in July 2011. His other charges were dismissed. The court treated this conviction as a second DUI for sentencing purposes because of his November 2003 DUI, described *infra*. He was sentenced to 180 days jail time, but 170 days were suspended. He was also sentenced to one year of probation, fined, and ordered to attend alcohol counseling. He participated in a group alcohol counseling program from August 2011 to February 2012. No treatment records were made apart of this hearing record. He provided two negative urinalysis tests that he took as part of the counseling program. Applicant claims he was not diagnosed while in the program and that no recommendations were made about his future alcohol consumption. (Tr. 23-24; GE 2; SOR answer; AE E-G)

November 2003 DUI (SOR ¶ 1.f)-At 1:30 am, Applicant was driving home from a friend's house where he had been drinking alcohol. He was under the legal age to drink alcohol at the time. His car was stopped by law enforcement for a traffic violation. He was given a breathalyzer test, which produced a result of .16 percent blood alcohol content which is over the legal limit. As a minor, no amount of alcohol in his blood system is permitted. He admitted drinking approximately 32 ounces of beer at the gathering. He was charged with DUI and pleaded guilty in January 2004. He was sentenced to 30 days jail time, suspended; probation for one year; and fined. (GE 2; SOR answer; AE D)

Applicant also testified that he has not attended any additional alcohol treatment programs other than described *supra*. He also claimed that he abstains from drinking alcohol periodically for about 60 to 90 days at a time, but no specific dates were provided. He did not provide any corroboration for these claimed periods of abstinence. His wife provided a written statement and claimed that he "rarely indulges in alcohol, especially not to excess. . . ." He admitted that he last drank alcohol three weeks before his hearing and that he was last intoxicated from alcohol between one and two years ago when he drank a few beers and had a few shots of whiskey. His background investigator noted that when he contacted Applicant in early 2022 to set up the interview, Applicant told the investigator that he was finishing up his workday and was working on his second bottle of wine. He was working from home that day. The investigator noted the call was at 3:30 pm. At his hearing, Applicant testified that the call was after his work hours, but he admitted drinking that much wine that day. He was not disciplined for the incident by his employer. (Tr. 21, 26-28, 31, 36, 39-40, 47; GE 2; AE V2-V3, V4)

Applicant does not attend Alcoholics Anonymous meetings (AA). He does not believe that the AA program is a good fit for him. He relies on support from friends and

family to refrain from making alcohol-related mistakes. He drinks alcohol less frequently because he is trying to live a healthier lifestyle. His wife “keeps him in check.” In September through October 2023, he attended six counseling sessions with a licensed clinical social worker (therapist). This counseling was provided through his employment. He admitted the sole reason he sought this counseling was due to having this hearing. The therapist provided a letter stating that Applicant is doing well in therapy. He also stated that he was pleased Applicant made the decision to remain alcohol free. (Tr. 20-21-22, 24-25, 37; AE W)

Applicant presented six character letters from family, friends, a former coworker, and his current team supervisor. They describe Applicant as intelligent, responsible, and someone who is dedicated, hard-working, and trustworthy. Several commented how he has improved himself over the years. His current supervisor recommends that he be considered for a security clearance. Applicant also provided two certificates he was awarded. (AE M-N, P-S, U-V2-V3)

Policies

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 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an 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.

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 J, Criminal Conduct

The security concern relating to the guideline for criminal conduct 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 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

(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

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant’s two DUIs and three other alcohol-related arrests between 2003 and 2020 constitute a pattern of criminal conduct. I find that both disqualifying conditions apply to SOR ¶¶ 1.a-1.c, 1.e and 1.f. The alleged DUI in August 2011 was not established by the evidence. Therefore, SOR ¶ 1.d is found for Applicant.

I have also considered all the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(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 last adverse alcohol arrest occurred in April 2020. This might be considered attenuated by time, but for his four earlier arrests on alcohol-related charges, including two DUI convictions in 2003 and 2011. He claims he has modified his drinking pattern since his 2020 arrest, however, his testimony in that regard is inconsistent and contradictory. He claims to have had periods of abstinence of 60 to 90 days, but he still continues to consume alcohol. He apparently told his therapist he was maintaining an alcohol-free lifestyle, yet he testified that he continues to consume alcohol. He last consumed alcohol three weeks before his hearing and was last intoxicated approximately one year before. He admitted drinking more than one bottle of wine when his background investigator called him to set up his interview in 2022. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) do not substantially apply.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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 a security concern and may be disqualifying. 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 whether the individual is 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's two DUI arrests, his three other alcohol-related arrests, and his description of his drinking habits support the application of the above disqualifying

conditions. However, I find that his court-ordered attendance at an alcohol treatment program in 2011 does not establish any disqualifying condition, rather it may be considered as a mitigating factor. Therefore, SOR ¶ 2.c is not established.

I have also considered all the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

(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 established a 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.

Applicant's last adverse alcohol incident occurred in April 2020. This might be considered attenuated by time, but for his four earlier arrests on alcohol-related charges, including two DUI convictions in 2003 and 2011. He claims he has modified his drinking pattern since his 2020 arrest, however, his testimony in that regard is inconsistent and contradictory. He claims to have had periods of abstinence of 60-90 days, but he still continues to consume alcohol. He apparently told his therapist he was maintaining an alcohol-free lifestyle, yet he testified that he continues to consume alcohol. He last consumed alcohol three weeks before his hearing and was last intoxicated between one and two years ago. He admitted drinking more than one bottle of wine when his background investigator called him to set up his interview in 2022. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply.

Applicant does not participate in AA, but rather relies on friends and family to avoid overindulging with alcohol. His claim of periodic abstinence, without corroboration, or recent evidence of treatment success, is not credible. He completed court-ordered treatment in 2011, but no details from that program are in the record. AG ¶ 23(b) does not apply. Furthermore, his repeated alcohol-related incidents after such treatment indicate he has not successfully addressed his problem. In his October and November 2023 sessions with a therapist, he apparently told the therapist he was committed to remaining alcohol free, which is inconsistent with his hearing admission where he stated he continues to drink alcohol. AG ¶ 23(d) does not 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 considered Applicant's letters of recommendation and his certificates. Applicant failed to provide sufficient evidence to mitigate the alcohol consumption and criminal conduct security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines J and G.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.c, 1.e-1.f:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant (except as 2.a refers to the allegation stated in 1.d)
Subparagraphs 2.c:	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.

Robert E. Coacher
Administrative Judge