



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



In the matter of: )  
)  
) ISCR Case No. 22-01814  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

02/07/2024

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guidelines G (alcohol consumption) and J (criminal conduct). Clearance is granted.

**Statement of the Case**

On April 27, 2021, Applicant submitted a Questionnaire for National Security Positions (SF-86). On October 6, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and J. The SOR detailed reasons why the DCSA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 26, 2022, Applicant submitted his Answer to the SOR.

On December 20, 2022, Department Counsel was ready to proceed. On January 10, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On January 18, 2023, DOHA issued a notice of hearing scheduling the hearing for February 23, 2023. The hearing was convened as scheduled. Department Counsel

submitted Government Exhibits (GE) 1 through 14, which were admitted without objection. Applicant testified, did not call any witnesses, and submitted Applicant Exhibits (AE) A through E, which were admitted without objection. I held the record open until March 24, 2023, and extended that date to April 28, 2023, to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE F through P, which were admitted without objection. On March 3, 2023, DOHA received the hearing transcript (Tr.).

## **Findings of Fact**

### **Background Information**

Applicant is a 57-year-old master technician employed by a defense contractor since February 1988. He seeks to retain his Secret security clearance which is a requirement of his continued employment. At the time of his hearing he had successfully held a clearance for 34 years. (Tr. 13-20) Applicant's senior security manager submitted a February 13, 2023 email confirming that Applicant had no reported security violations. He further added that Applicant mentors and trains company employees to remain security compliant. (Tr. 79-80; AE E)

Applicant graduated from high school in June 1984. He was awarded an associate of applied science degree in electronics in June 1988. (Tr. 20-22; GE 1) He did not serve in the U.S. armed forces. Applicant has never married and has no dependents. (Tr. 22-23)

### **Alcohol Consumption and Criminal Conduct**

Nine allegations were cited under this concern: (1) Applicant was cited for illegal transportation of alcohol in State A in 1983. He was convicted of, or pleaded guilty, to this offense; (2) Applicant was cited for illegal transportation of alcohol in State A in May 1986. He was convicted of, or pleaded guilty, to this offense; (3) Applicant was arrested and charged with DUI in State B in January 1988. He was convicted of, or pleaded guilty, to this offense; (4) Applicant was arrested and charged with DUI in State C in February 1996. He was convicted of, or pleaded guilty, to this offense; (5) Applicant was arrested and charged with DUI in State C in September 1997. He was convicted of, or pleaded guilty to, this offense; (6) Applicant was arrested and charged with DUI in State C in February 2000. He was convicted of, or pleaded guilty, to this offense; (7) Applicant was arrested and charged with DUI in State C in March 2006. He was convicted of, or pleaded guilty, to this offense; (8) Applicant was arrested and charged with DUI in State C in September 2019. He was convicted of, or pleaded guilty, to this offense; and (9) Applicant was arrested and charged with DUI in October 2019. The September and October 2019 DUIs were apparently adjudicated together. (SOR ¶¶ 1.a – 1.i)

These allegations are established by Applicant's April 27, 2021 SF-86; his Office of Personnel Management (OPM) Report of Investigation (ROI), Personal Subject Interview (PSI) conducted on July 21, 2021 with follow-on contact; his OPM ROI PSI

conducted on April 12, 2021 with follow-on contact; his Response to Interrogatories dated 12, 2022; DISS CATS Incident Reports printed December 20, 2022; FBI Criminal History dated July 19, 2021; County Sheriff's Criminal History dated August 5, 2021; OPM ROI PSI conducted on July 12, 2007; Remec Adverse Information Reports dated February 21, 2000, and February 5, 1998; Criminal Complaint No. M-XXXXXX dated March 1, 2000; Traffic Complaint No. T-XXXXXX, various dates; Sworn statement of Subject dated February 9, 2001; the Quick Guide to State A Liquor Liability Laws printed September 22, 2022; his October 26, 2022 SOR Answer in which he admitted all allegations; and his hearing testimony. (GE 1 -14; SOR Answer; Tr.)

Applicant provided evidence that the 1983 and 1986 alcohol-related incidents in State A were actually citations, not arrests. On these two occasions, Applicant was pulled over for speeding and the police discovered that he was underage and transporting alcohol. (Tr. 23-26) Applicant could not recall many details about his earlier 1988, 1996, and 1997 DUIs; however, he does not dispute that they occurred. (Tr. 27-32)

Applicant does recall spending 180 days in a work-release program following his 2000 DUI arrest. At the time of his 2000 DUI arrest, he was on probation for his prior DUIs. After his 1997 DUI, he stopped drinking for about nine months, but returned to drinking, "but cut back," and "drank to intoxication three to four times a year" until his 2000 DUI. (Tr. 32-34; GE 13) Applicant did not participate in any voluntary substance abuse counseling treatment between his 1997 DUI and 2000 DUI. After his 2006 DUI, he participated in a "work program" that lasted approximately three months. (Tr. 34-35; GE 5) In between DUIs, Applicant had a history of stopping and resuming drinking. (Tr. 35-39; GE 8, GE 9)

Up until 2019, Applicant had accumulated five DUI arrests. In 2019, he was arrested for DUI in September with a .28 BAC. Two weeks later, he was arrested for DUI in October 2019 with a .32 BAC. After these two back-to-back DUI arrests Applicant had an "epiphany" that he had a drinking problem. Before his September DUI, he has gone home to celebrate his mother's 95<sup>th</sup> birthday and he stated that experience had taken an emotional toll on him. He started drinking three to six beers a day typically at home. However, he was drinking at a bar before his September DUI and attempted to drive home. (Tr. 39-42, 64-65) It appears that his September and October 2019 DUI arrests were merged and adjudicated together. He pleaded guilty and was sentenced to five years of unsupervised probation, a \$1,600 fine, and ordered to attend an enhanced offender's course. This class consisted of a nine-month treatment program from July 2, 2021 to May 2, 2022, for which he received a certificate of completion. (Tr. 42-45, 61-63; GE 4; AE H)

On the recommendation of his attorney, before his September and October 2019 DUI arrests were adjudicated, Applicant enrolled in an Intensive Outpatient Program. He was formally admitted to the program on January 29, 2020, with a primary diagnosis of alcohol dependence, in remission, and was successfully discharged on April 3, 2020. Before Applicant was discharged, his Program developed a treatment plan which provided Applicant "will continue to use good coping skills to manage his triggers and

prepare for discharge,” that he “will continue to check in with his sponsor and use his sober support system to manage his daily life stressors,” and he “will attend groups, meet with psychiatrist and prepare for discharge by using his coping skills. Tx team will provide education, support and feedback as needed.” (Tr.46-48, 68-71; GE 4(a))

Applicant has a sobriety date of October 7, 2019, and he has not had a drink since – “[t]hree years, four months, and 16 days” as of the date of his hearing. (Tr. 45, 56) Applicant acknowledged that he is an alcoholic and that if he drinks one drink, it will lead to drinking more. As an alcoholic, he understands he cannot drink anything. He realized that with the increases in his DUI BAC levels and progression of his alcoholism, “the next step is death inevitably.” (Tr. 46, 56) Both of Applicant’s parents were alcoholics. Alcohol was prevalent in every family event or function. His father passed away “about 20 years ago” and died of cirrhosis and liver cancer. His mother passed away in October 2022. (Tr. 66-67)

To maintain sobriety, Applicant attends AA meetings every day and submitted documentation of such attendance. Additionally, he not only leads meetings, but also serves as secretary at meetings. Having admitted he is an alcoholic, Applicant considers his condition to be a mental disease, “in the respect that I can – I can justify drinking in my head for just about any reason. And unless – unless I recognize my disease, it will – it will be all-encompassing and take over my life. I don’t know where else to go with that. I don’t know what else to say on that.” (Tr. 46, 63, 65-66; AE I)

Applicant has been actively participating with AA since October 2019 to the present. During the COVID pandemic, there were no in-person AA meetings; however, Applicant and another AA member started their own Zoom AA meeting. Applicant leads that meeting consisting of 15 to 20 individuals every day at 5:30 PM. He finds the fellowship in AA a supplement to staying away from alcohol. He has completed all 12 steps in AA, is in the process of repeating them, and has an AA sponsor. He also participates in several other AA meetings during the week. During one of those meetings, he serves as secretary to make sure rent is paid and there is money for coffee, tokens, and supplies. (Tr. 48-52, 71-75; GE 1) In addition to AA, Applicant relies on his spirituality to deal with the losses and stressors that led to his drinking. He cited the Serenity Prayer as a source of inspiration and spoke of a “higher power” that provides him strength in times of need. (Tr. 53-54) As of his hearing date, Applicant had served two years of unsupervised probation without any violations. (Tr. 55)

Although Applicant has had periods of sobriety in the past, his current period of sobriety is different from those. In the past, he did not have any support group, nor did he have the coping tools he has today. (Tr. 55) He stated:

In the past, when I tried to forecast what the future would hold, because that’s what I would do – I would forecast. I would say, well, you know what? Maybe then I can do this or maybe – and that’s, in my opinion, what got me into the situation where sobriety did not last because it was so – it wasn’t in the present, whereas today – I live – I live today in the present. (Tr. 56)

Applicant did not realize he was an alcoholic until October 5, 2019. Before that he considered his DUIs to be bad luck or bad timing and did not think he had a problem with alcohol. In retrospect, he was a functioning alcoholic and was able to separate his work from his non-work drinking habits. His drinking never caused him problems at work. He drank alone as well as in group settings. He would frequently meet at his local VFW with a group of friends after work. (Tr. 58-60)

Applicant works a 40-hour week, but with accumulated paid time off, he has every Friday off. Having the additional time off during the week has been a "huge benefit" to maintaining his sobriety. He owns his own home that was built in 1948 and spends a significant portion of his discretionary free time maintaining his home, gardening, and taking care of his dog. (Tr. 75-77) He also participates in Homes For Our Troops program, which provides homes for disabled veterans. (Tr. 77; AE J)

Post-hearing, Applicant submitted a January 5, 2022 chemical dependency assessment that corroborated his sobriety. He also submitted a comprehensive chemical dependency evaluation dated April 13, 2023. The evaluation was completed by a highly credentialed psychotherapist and addiction specialist. (AE F(2), AE O, AE P) The report concluded:

After reviewing all aspects of this evaluation including the information obtained in the clinical interview, the questionnaires and assessments, the UA screening and a review of diagnostic criteria for Substance Use Disorder in the DSM-V, it is this Evaluator's opinion, that [Applicant] would not meet criteria for any current Alcohol Use Disorder mild, moderate, or severe. [Applicant] has demonstrated remorse, insight, and has been extremely proactive in dealing with the events of his past. Additionally, [Applicant] has been sober over 3 years and pursued lifestyle changes that are congruent with first order, comprehensive, and behavioral change. Furthermore, [Applicant] has been extremely involved in Alcoholics Anonymous and has spent a significant amount of time sponsoring newly sober people in his support group and being an example of a sober lifestyle. His past offenses should be considered events that lend little association with his current lifestyle. It is of this Evaluator's opinion that, at this time, [Applicant] is fully capable of maintaining full licensure and security clearance without risk associated with Alcohol Use Disorder. Furthermore, no additional treatment or testing is indicated at this time. (AE O, AE P)

With regard to AA participation, Applicant stated attending AA meetings has helped him tremendously. He also derives satisfaction in helping others go through the AA process. In short, the AA meetings have provided a turning point for him. He plans to continue participating in and facilitating AA meetings and helping other AA members in the future. (AE F)

## Character Evidence

Applicant submitted six reference letters: (1) former co-worker and friend, who has known Applicant since 2016 (AC); (2) fellow AA member and friend, who has known Applicant 2019 (ND); (3) fellow co-worker and friend, who has known Applicant for more than six years (RW); (4) former co-worker and friend, who has known Applicant since 2016 (KH); (5) fellow AA member and friend, who has known Applicant for more than two years (JL); and (6) fellow AA member and co-founder, with Applicant, of the daily Zoom AA meetings (FS). Applicant's work-related references lauded his professionalism, honesty, good character, and contribution to the national defense. Additionally, his AA references noted his commitment to sobriety and the AA program, as well as his willingness to help others similarly situated. (Tr. 77-79; AE A – AE D, AE K) Applicant also submitted his employee evaluations for 2020, 2021, and 2022 that further corroborate the favorable comments that his reference letters provided. (AE L – N)

## 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 AG ¶ 2(d), describing 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 clearance favorable 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).

### **Alcohol Consumption**

AG ¶ 21 describes the security concern about 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 provides alcohol consumption conditions that could raise a security concern and may be disqualifying in this case as follows:

- (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;
- (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 record evidence establishes AG ¶¶ 22(a), 22(c), and 22(d). Additional discussion is in the mitigation section, *infra*.

AG ¶ 23 lists four conditions that could mitigate security concerns:

(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 was involved in nine alcohol-related incidents involving the police and courts. The first two incidents involving illegal transportation of alcohol occurred in 1983 and 1986 when Applicant was underage, over 37 and 40 years ago, respectively. These two incidents are of limited security significance given they are minor in nature, the length of time that has elapsed, and Applicant's underage status at the time.

The remaining seven incidents were all DUI incidents that occurred in 1988, 1996, 1997, 2000, 2006, and twice in 2019. Until Applicant was arrested for the two 2019 DUIs, he was not required to attend any alcohol awareness classes. The recklessness of his conduct and the severity of his alcoholism did not register with Applicant until these last two DUIs. The progression of his intoxication led Applicant to the realization that he was spiraling downward and as he put it, "the next step is death inevitably."

Applicant has a sobriety date of October 7, 2019, and has not had a drink since. he participated in two programs since his last two arrests. The first program he attended was on his own volition, on the advice of his attorney, from January 2020 to April 2020. This program taught him coping skills he was otherwise not familiar with. By the time his two 2019 DUIs came up for sentencing, he was able to demonstrate to the court that he was committed to overcoming his alcoholism. He was required to attend an additional nine-month program from July 2021 to May 2022. As noted, Applicant stopped drinking in October 2019, three months before he began attending any course. Applicant has embraced the AA program in its entirety not only as a participant, but also as a coordinator of AA meetings, a secretary at AA meetings, and as a mentor to fellow AA members. He produced documentation of his participation in AA meetings and a commitment to a lifestyle of sobriety.



Applicant received a favorable prognosis from the first program he attended and a certificate of completion from the second program he attended. Applicant's recent comprehensive chemical dependency evaluation, completed in April 2023 by a psychotherapist and addiction specialist, concluded that he did not meet the criteria for any current Alcohol Use Disorder, mild, moderate, or severe. Furthermore, the evaluation noted that Applicant's past offenses lend little association with his current lifestyle.

Due to the accumulation of seven DUIs from 1988 to 2019, application of AG ¶ 23(a) is not deemed appropriate. However, Applicant has acknowledged his alcoholism, a point he made abundantly clear throughout his hearing testimony. He successfully completed two treatment programs and complied with all of the recommended and required aftercare. As noted, Applicant has not had a drink since October 7, 2019, participates in daily AA meetings, and had been sober three years, four months, and 16 days as of his hearing date. AG ¶¶ 23(b) and 23(d) fully apply. Alcohol consumption concerns are mitigated.

### **Criminal Conduct**

AG ¶ 30 describes the security concern about criminal conduct: "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:

- (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 individual was formally charged, prosecuted, or convicted; and
- (c) individual is currently on parole or probation.

Security concerns under AG ¶¶ 31(a), 31(b), 31(c) are established. Discussion is in the mitigation section, *infra*.

AG ¶ 32 lists conditions that could mitigate security concerns:

- (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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

Mitigation of the criminal conduct security concerns was proven under AG ¶¶ 32(a) and 32(d), for the same reasons discussed in the alcohol consumption mitigation section, *supra*. Criminal conduct concerns are mitigated.

### **Whole Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. A careful weighing of a number of variables in considering the "whole-person" concept is required, including the totality of his or her acts, omissions, and motivations. Each case is decided on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, 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), "[t]he ultimate determination" of whether to grant or continue national security eligibility "must be an overall common-sense judgment based upon careful consideration of the [pertinent] guidelines" and the whole-person concept. My comments under Guidelines G and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed in my discussion of those guidelines, but some warrant additional comment.

Applicant is a 57-year-old master technician who has spent the majority of his adult working life working in and supporting the defense industry. As of his hearing, he had successfully held a clearance for 34 years. Applicant has a documented record of sustained superior performance as an employee. His evaluations and reference letters amply document this. Applicant is well-regarded by his co-workers and management.

These favorable opinions are equally shared by his friends and associates outside of work. However, apart and separate from being a model employee, Applicant was haunted by alcoholism.

Fortunately for Applicant, he recognized the severity and self-destructive nature of his alcoholism and stopped drinking. He sought professional help and has embraced the Alcoholics Anonymous program. He recognizes that one drink is one drink too many and takes one day at a time. Applicant also recognizes that holding and maintaining a clearance is a privilege. Applicant's firm commitment to sobriety is further demonstrated by the length of his sobriety. His prognosis and supporting evidence support a favorable whole person assessment.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant's evidence was sufficient to overcome the *Dorfmont* presumption with respect to the security concerns in the SOR.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated the Guidelines G (alcohol consumption) and J (criminal conduct) security concerns.

### **Formal Findings**

Formal findings for or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

|                           |               |
|---------------------------|---------------|
| Paragraph 1, Guideline G: | FOR APPLICANT |
| Subparagraphs 1.a – 1.i:  | For Applicant |
| Paragraph 2, Guideline J: | FOR APPLICANT |
| Subparagraphs 2.a – 2.b:  | For Applicant |

### **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

---

ROBERT TUIDER  
Administrative Judge