



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXX	)	ISCR Case No. 23-00937
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro Se*

02/09/2024

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**Decision**

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KATAUSKAS Philip J., Administrative Judge:

Applicant provided sufficient evidence to mitigate the security concerns raised under Guideline G, alcohol consumption, and Guideline J, criminal conduct. Eligibility is granted.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on June 19, 2022, in connection with his employment by a defense contractor. On May 12, 2023, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

On June 12, 2023 Applicant submitted an answer to the SOR (Answer) and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. On July 12, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 5. On the same date, the FORM was mailed to Applicant who received it on July 24, 2023. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He submitted a response (Response) on August 23, 2023, to which the Government did not object. Government Items 1 and 2, the SOR and the Answer, respectively, are the pleadings in the case. Items 3 through 5 are admitted without objection. The Response is admitted without objection. The case was assigned to me on November 6, 2023.

On January 4, 2024, I re-opened the record *sua sponte* until January 19, 2024, to allow Applicant to submit documents about the status of his case. On January 13, 2024, he submitted two documents marked and identified below.

### **Findings of Fact**

After a thorough and careful review of the pleadings and the Government's exhibits, I make the following findings of fact.

Applicant is 32 years old, earned an Associate's degree in June 2014, and has taken courses beyond that from August 2014 to July 2015. He has never married and has a three-year-old daughter. Since April 2022, he has worked for a defense contractor. (Item 3.)

Under Guideline G, the SOR alleged that Applicant: (1) was arrested in June 2022 and charged with Driving Under the Influence; (2) entered a plea of *nolo contendere* to Reckless Driving Involving Alcohol or Controlled Substance; (3) was sentenced to one day in jail; (4) to one year of probation (5) to complete DUI School and a Victim Awareness Program, and (6) to perform 50 hours of community service. He was placed on probation until December 2023. Those allegations were cross-pleaded under Guideline J. (Item 1.) The charge was a misdemeanor and was his first offense. (Items 4 and 5.) He answered, admitted all SOR allegations, and attached three supporting documents that are identified as follows (Item 2):

Applicant's Exhibit A (AE A) – State DUI and Substance Abuse Program Certificate of Completion dated August 19, 2022 (noting "Counseling/Treatment was not required at Evaluation");

AE B – Basic Driver Improvement Course Certificate of Completion dated February 2, 2023; and

AE C – Impact Panel Certificate of Completion dated July 11, 2022.

These exhibits being part of Applicant's Answer, they are already part of the record.

The salient portions of Applicant's August 17, 2023 Response are summarized below:

On June 18, 2022, I was unfortunately charged with a DUI offense. While I deeply regret this lapse in judgment, I took full responsibility for my time of my situation by entering a plea. At the time of arrest, I decided not to partake in the breath test. Years ago, in a conversation with a trusted friend of mine, who is in local law enforcement, advised me to never do the Breathalyzer. He advised if I were ever to get arrested to decline the breathalyzer and all field sobriety test [sic]. I took that information to heart and remembered it at the time of my arrest. Declining these tests may not have been the right decision, looking back at my situation, but it was the decision made with the information I had at the time. I want to assure all involved that this is an isolated incident and is not a reflection of my character, values, or commitment to my responsibilities. I acknowledge my situation and charge of reckless driving with alcohol. It was not my intention to mischaracterize or mislead about my charge. Throughout the process, my case was referred in the short phrase of reckless driving. At no time do I downplay my case, I take responsibility for my actions while acknowledging the seriousness of the offense.

[In this paragraph, Applicant summarizes the steps he has taken to satisfy successfully the terms of his sentence during the seven months since his arrest. He attached documents that will be marked and identified below as additional Applicant exhibits.]

[In this paragraph, Applicant recounts the steps he has taken since his arrest not required by his sentence to become more health-conscious and adopt a more healthy life-style.]

In his penultimate paragraph, Applicant states:

I understand that holding a security clearance requires the highest level of trust, integrity, and responsibility. I am fully aware of the potential implications of my actions and am determined to prove that I can meet and exceed these expectations. My professional record, including . . . employee of the month, and monthly distinction performance status, demonstrates my commitment to excellence and my ability to contribute positively and endeavor [sic].

Attached to Applicant's Response was a multi-page document that I have marked as AE D identified as: County Court payment receipt dated August 14, 2023, showing

“Early Termination Is Being Proceeded. No Further Apts.” The Response has been admitted without objection.

Applicant’s two post-hearing documents are identified as follows:

AE E – This is a duplicate of AE D.

AE F – County Court Notice/Order of Completion of Probation Conditions Eligible for Early Termination dated August 29, 2023.

These two exhibits are admitted without objection.

Applicant’s personal subject interview (PSI) was conducted on September 20, 2022. The highlights are summarized below:

Applicant was driving home from a friend’s house, after having one beer. The police pulled him over for a missing license plate light. He was asked to complete an in-field breathalyzer test due to the smell of alcohol, which he declined. He was transported to the sheriff’s office and held for 12 hours. He was released on his own recognizance. He has not received a court date but was told that he would be appearing due to the charge of a DUI. He believes that the charge for DUI is a misdemeanor. He has not been given any charge information. He has not been to court yet. This has only happened once. (Item 5.)

### **Law and Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available and 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## Analysis

### Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set forth 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 the following condition that could raise security concerns under AG ¶ 22. The following disqualifying condition is applicable in this case:

- (a) alcohol-related incidents away from work, such as driving while under the influence . . . , regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with an alcohol use disorder.

AG ¶ 23 also notes the following condition that could mitigate the security concerns under AG ¶ 22:

- (c) the individual is participating in a counseling . . . program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program.

Applicant's admissions in his Answer, his PSI, and Government Exhibit 4 establish the applicability of AG ¶ 22(a). The next question is whether mitigating condition AG ¶ 23(c) applies.

Since his arrest and throughout the clearance investigation process, Applicant has been fully candid about the circumstances of his arrest. He was pulled over for a minor auto light infraction. Due to the smell of alcohol in the vehicle, he was cited for DUI. Since he declined in-field sobriety tests, he was taken to the sheriff's office, then released on his own recognizance. During his PSI, he twice referred to his arrest as being for DUI, even though at that time he had not yet been to court or seen the charges. He was not equivocal at all on that point. He also confirmed that this was his first such offense.

Applicant's exhibits tracked his success accomplishing his sentence requirements. Those included a DUI Program, an evaluation that concluded treatment was not needed, and a Basic Driver Improvement Course. As a result of that progress, he was deemed eligible for an early termination of his one-year probation. On August 29, 2023, the Court ordered an early termination of his probation. He has satisfied mitigating condition AG ¶ 23(c).

## **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30 as follows:

Criminal activity creates doubt about an Applicant'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.

The guideline notes conditions that could raise security concerns under AG ¶ 31. The disqualifying condition potentially applicable in this case is:

- (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.

Applicant admitted to his June 2022 arrest for DUI. Therefore, the above disqualifying condition applies.

AG ¶ 32 provides conditions that could mitigate security concerns. The following condition is applicable:

- (c) 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.

The analysis under Guideline G applies fully to AG ¶ 32(c).

## **Whole-Person Concept**

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concerns arising under Guideline G, alcohol consumption, and Guideline J, criminal conduct.

## **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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is granted.

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Philip J. Katauskas  
Administrative Judge