



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



In the matter of:)	
)	
)	ISCR Case No. 23-00177
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2024

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the alcohol consumption or criminal conduct security concerns. The Government withdrew the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 28, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption), Guideline E (personal conduct), and Guideline J (criminal conduct). Applicant responded to the SOR with an undated response (Answer) and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2023.

The matter was originally scheduled for hearing on November 15, 2023. At Applicant's request and without objection, I continued the original hearing date. The hearing was convened as rescheduled on January 4, 2024. I admitted Government Exhibits (GE) 1 through 3 in evidence without objection. Applicant testified but did not offer any documentary evidence at hearing. At Applicant's request, I left the record open

for the parties to provide post-hearing documents. Neither party offered any post-hearing documents as evidence. I received a transcript (Tr.) of the hearing on January 11, 2024.

Amendment to the SOR

During preliminary matters, Department Counsel amended the SOR by withdrawing all the allegations under Guideline E and the allegations under Guideline J, except a cross-allegation of all but one of the Guideline G allegations.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer or a predecessor thereof since about January 2011. He earned a high school diploma in 2004 and has taken some college courses but has not earned a degree. In 2004, after high school, he enlisted with the Navy and was on active duty until 2008, when he was discharged for failing to report for duty because he had “alcohol on his breath.” He was “forced out of the Navy” for alcohol-related reasons. He claimed he received a general discharge under honorable conditions. He has been married since 2008. He has three children, ages thirteen, nine, and one. (Tr. 22, 25-29, 35-36, 71-72; GE 1, 2)

From May 2007 until at least March 2020, Applicant regularly consumed alcohol in excess and drove while intoxicated. During this timeframe, he normally drank two to three times per week and again on the weekend. He estimated that he often drank 10 to 15 beers over a two-hour timespan and then drove home. He has been arrested and charged with driving under the influence of alcohol (DUI) four times between May 2007 and March 2020. Police arrested him and charged him with DUI in May 2007, April 2014, July 2016, and March 2020. He pleaded guilty and was convicted of the 2007 DUI, pleaded guilty and received a deferred adjudication of the 2014 DUI charge, pleaded *nolo contendere* to the 2020 DUI charge, and the disposition of his 2016 DUI charge is unclear. Regardless of the outcome of the charges, he was driving while intoxicated on all four occasions he was charged with DUI. He was involved in vehicular accidents on two of these occasions, in which he collided with a parked car (2014 DUI) and a pole (2007 DUI). With respect to the 2014 DUI, he claimed that he had been drinking heavily, passed out at a friend’s house, and then “woke up” while driving his car right before getting into an accident. (Tr. 22-25, 37-73; Answer; GE 1-3)

After his 2020 DUI, Applicant knew he had to address his alcohol consumption issues. About a month after his 2020 DUI arrest, Applicant sought and received mental-health and alcohol-related counseling from a neural therapist until about December 2021. He stopped attending this counseling because he could not afford it. He contemplated attending Alcoholics Anonymous (AA) meetings but has not done so because he considered the aforementioned mental-health and alcohol-related counseling to be sufficient. He has access to alcohol-related treatment that he can afford through Veterans Affairs (VA), but he does not know how to begin the process and has not looked into it. After his 2007 DUI, the Navy required him to attend a

Substance Abuse Rehabilitation Program (SARP), and an Alcohol Dependency Program (ADAPT). He completed both of these requirements. (Tr. 34-35, 47-50, 63, 70-71, 75-78; Answer; GE 1-3)

Applicant also has been attending marital counseling for an unspecified period of time. While he claimed that he was never told to abstain from alcohol or that he suffered from an alcohol use disorder, he did abstain from alcohol for about six months after his 2016 DUI, and from March 2020 until December 2023. During his personal subject interviews in late 2021 and early 2022, Applicant told a DOD investigator that he vowed to stop drinking and had no desire to start drinking again. However, in December 2023, he had a glass of wine with his wife to celebrate his wedding anniversary. He also had a glass of wine on New Year's Eve 2023. He acknowledged that he should not be consuming alcohol but, paradoxically, is not sure whether he will abstain in the future because he does not have an urge to drink and thinks he is in control. He claims that counseling has taught him to use more healthy coping mechanisms. He also claimed that he has not driven after consuming alcohol since his 2020 DUI. (Tr. 29-31, 49-62, 73-82; Answer; GE 1-3)

Applicant acknowledged that he has made poor choices involving alcohol in the past, but he believes that he has remedied the underlying issues that caused them. He claimed that he had undiagnosed and untreated mental health issues that contributed to his overdrinking. Sadly, within a six-month period prior to his 2016 DUI, his sister, grandmother, and best friend passed away. He claimed that these losses contributed to his mental-health issues, which resulted in him drinking more. He claimed that he does well at work, has never shown up to work intoxicated, and has been entrusted to be a union representative for about 700 people over the last eight years. (Tr. 22-25, 29, 35, 51-52; Answer; GE 1, 2)

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 DUIs in 2007, 2014, 2016, and 2020 after drinking too much and driving. He acknowledged that he often drank too much alcohol. 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.

On at least four occasions over a span of about 13 years, Applicant has consumed far too much alcohol, driven a vehicle while intoxicated or under the influence, and been arrested for DUI. Although it has been almost four years since Applicant's most recent alcohol-related arrest, his pattern of impaired driving, with significant gaps between alcohol-related incidents, casts doubt on whether these incidents are likely to recur. His willingness to begin drinking again after three years of abstinence, albeit in moderation, despite acknowledging that he probably should not, also gives me pause about his current judgment. For these reasons, he has not met his burden to show that the behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and judgment. He also has not met his burden of showing that he has demonstrated a clear and established pattern of modified consumption. AG ¶¶ 23(a), 23(b), and 23(d) do not apply.

Applicant has not met his burden of proving that he completed a treatment or counseling program and that he then followed treatment recommendations. While he claimed that he completed ADAPT and SARP after his 2007 DUI, he clearly did not follow treatment recommendations when he continued to binge drink and drive while intoxicated. There is no evidence that he successfully completed the treatment program

that he began in 2020. The only evidence he presented is that he stopped that treatment at some point because he could not afford the cost. AG ¶ 23(c) does not apply.

Guideline J, Criminal Conduct

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

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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 drove while intoxicated on at least four separate occasions between 2007 and 2020. The above-referenced disqualifying condition is established, and the burden shifts to Applicant to provide evidence in mitigation.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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.

For the reasons I provided in my analysis of potential mitigating conditions under Guideline G, I do not find that Applicant's DUIs are unlikely to recur. AG ¶ 32(a) does not apply.

AG ¶ 32(d) has some applicability. Applicant has not driven under the influence of alcohol or engaged in other criminal behavior in about four years. There is also some evidence of a good employment record, such as his being awarded a role as a union representative.

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 Guidelines G and J in my whole-person analysis. I have also considered Applicant's military service. However, I find that the totality of the evidence, including his DUIs, his willingness to continue to drink, and his failed efforts to effectively modify his alcohol consumption after earlier DUIs, leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the alcohol consumption or criminal conduct 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: Subparagraphs 1.a-1.e:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Paragraph 3, Guideline J: Subparagraphs 3.a-3.c: Subparagraph 3.d:	AGAINST APPLICANT Withdrawn Against Applicant

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge