



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



In the matter of: )  
)  
) ISCR Case No: 23-00862  
)  
)  
Applicant for Security Clearance )

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

02/13/2024

Decision

BENSON, Pamela, Administrative Judge:

Applicant failed to mitigate the alcohol consumption and criminal conduct security concerns. He continued to consume alcohol in violation of his probation. Not enough time has elapsed since he engaged in criminal behavior to show that future misconduct is unlikely to recur. National security eligibility is denied.

**Statement of the Case**

On April 28, 2023, the Defense Counterintelligence and Security Agency (DCAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 10, 2023, and requested a hearing before an administrative judge (Answer). The case was assigned to me on August 4, 2023. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 28, 2023, setting the hearing for December 12, 2023. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4; Applicant testified, but did not offer any documents. I admitted all proffered exhibits into evidence without objection. I held the record open for two-and-one-half weeks in the event either party wanted to supplement the record with additional documentation. No documentation was submitted. DOHA received the hearing transcript (Tr.) on December 19, 2023, and the record closed on December 31, 2023.

### **Findings of Fact**

Applicant admitted all of the allegations contained in the SOR. (§§ 1.a -1.c, 2.a, and 2.b.) (Answer) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 32 years old, married with two sons, ages 8 and 9, and a baby due in March 2024. In April 2022, he began working for a government contractor as a research lab mechanic. This is Applicant's first application for a DOD security clearance. In April 2022, he submitted an Electronic Questionnaire for Investigations Processing (e-QIP). In January 2023, he answered interrogatory questions developed after his August 2022 background interview with an investigator. (Tr. 15-17, 35; GE 1, 2 and 4)

### **Alcohol consumption and criminal conduct**

I listed Applicant's conduct in chronological order as follows:

SOR § 1.c (cross-alleged under § 2.a): Applicant was charged in October 2011 with an underaged drinking of alcohol. He stated that he was at a bar drinking alcohol at the age of 20. After he and his friend left the bar, they were pulled over by a police officer and charged with consuming alcohol underage. (Tr. 49; GE 3)

SOR § 2.b: Applicant was charged in November 2011 with drug abuse and possession of paraphernalia. He had people at his apartment and the police were called due to a noise complaint. When the police looked into his apartment, they saw a pipe for smoking marijuana and a bag of marijuana sitting on his table. He was charged for the offenses listed above. Applicant testified that he could not recall the last time he had used an illegal substance since it was so long ago. (Tr. 49-50)

SOR § 1.b (cross-alleged under § 2.a): Applicant was charged in September 2016 with operating vehicle while intoxicated (OVI). He stated that during this time he worked for a small family-owned heating and air conditioning company. One day the employees did not have any scheduled work to perform, and the owner of the company offered to pay his employees to come to his house and plant trees. It was hot that day and his boss provided beer for the workers. After the work was finished, the employees continued to stay at the home drinking beer and talking. Without any advance warning, his boss had to take his wife somewhere, and the employees were expected to leave immediately. Applicant stated, "I was coming down the road and then forgot about this hill, because I

was intoxicated, and I rolled my car and ended up in a ditch that night and then went to the hospital.” His blood- alcohol level was twice the legal limit, around .16% or .17%. He was found guilty of OVI, his driver’s license was suspended, he was ordered to attend Mothers Against Drunk Driving (MADD) alcohol education meetings for a weekend, and he was assessed fines and costs. (Tr. 29-33; GE 1 and 4)

Applicant told the investigator during his August 2022 background interview that he had consumed approximately six beers before his 2016 OVI arrest. He also told the investigator that he crashed his car after he tried avoiding a deer in the road. When asked about this discrepancy during the hearing, Applicant stated he could not recall if he told the investigator there was a deer, and he said that he was unable to recall if he even saw a deer in the road before he crashed his car because he was intoxicated. (GE 4; Tr. 30-31)

SOR ¶ 1.a (cross-alleged under ¶ 2.a): Applicant was arrested in January 2022 and charged with OVI, blood alcohol content (BAC) greater than 0.08% but less than 0.17% (Applicant registered 0.139%) and speeding. He was convicted of physical control-reckless driving and the court ordered him to complete a substance abuse assessment, pay a fine of \$250 plus court costs, his driver’s license was suspended until January 2023, and he was placed on one year of probation, which he successfully completed about a week before his December 12, 2023 hearing. He stated that he drove his wife’s car and went to a friend’s house to watch a playoff football game. Another friend in attendance was supposed to drive him home, but his friend drank too much alcohol and got sick. He estimated that he may have consumed more than six beers during the game. After Applicant waited an hour-and-a-half to two hours at his friend’s house to sober up, he drove that night and was pulled over for speeding near his home. He was arrested for the offenses listed above. His attorney noted that some of the field sobriety tests were improperly conducted by the police officer, so Applicant was able to plead to a lesser offense of physical control-reckless driving. Applicant stated he voluntarily attended 10 Alcoholics Anonymous (AA) meetings on his own because he “felt like it was time to start shaping [his] life up and getting [his] life together and quit drinking.” He initially denied that he was ordered by the court to attend AA meetings, but later during the hearing he admitted he was court-orderd to attend 10 AA meetings. (Tr. 17-23, 27-29, 46; GE 1, 2 and 4)

The January 2022 police report reflected that Applicant had stated to the police officer that he had last consumed alcohol 20 minutes before he was pulled over. The passenger in Applicant’s car tested below the legal limit and was permitted to drive Applicant’s car from the scene. (GE 2) When asked about this information during the hearing, Applicant stated that since his friend had gotten sick, he must have eliminated the alcohol from his system which may be the reason why his friend registered below the legal limit. Applicant could not explain why he told the officer he had last consumed alcohol 20 minutes before he was pulled over as compared to his testimony that he waited an hour-and-a-half to two hours at his friend’s house before driving so that he could sober up. (Tr. 20-21, 44-45; GE 2)

During his August 2022 background interview, Applicant stated that he had consumed ten beers before his January 2022 arrest. He stopped drinking alcohol

altogether in January 2022 following his arrest. He told the investigator that he intends to continue his abstention of alcohol in the future. He is content with his life without alcohol and planned to abstain from drinking alcohol.

Applicant first began consuming alcohol at the age of 17. He testified that he drank beer on Fridays and Saturdays, and he would consume anywhere from 6 to 12 beers each evening before he had his OVI [should be defined above] arrest in September 2016 (age 25). After that arrest, he did not drink and drive for about the first six months, but he slowly slipped back into his old drinking habits. He would drive under the influence of alcohol about once every month or two until his second OVI arrest in January 2022. Since that incident, he has made positive lifestyle changes and no longer drinks and drives. He has continued to drink alcohol to the present time, but only on holidays and family gatherings. His last use of alcohol occurred on Thanksgiving Day 2023. He stated that he now consumes alcohol infrequently and in moderation. (GE 4; Tr. 39-42)

During his August 2022 background interview, Applicant provided information about his use of alcohol. He stated that between the age of 21 to January 2022 (age of 30), he would consume a single six-pack of beer over the course of the weekend. He did not get intoxicated from this level of alcohol use. He told the investigator that he got intoxicated one or two times a year with his friends. He stated it took 12 beers for him to become intoxicated. He is content with his life without alcohol. This information was inconsistent with his testimony. (GE 4)

During the December 2023 hearing, Applicant stated that he has consumed alcohol on a few occasions since he had his August 2022 interview, but he has never drank to excess. During the hearing he admitted that he violated the terms of his probation that required total abstinence from alcohol while serving probation through early December 2023. He also stated that during his probation he had to undergo about five or six urinalysis tests, and he always tested negative for alcohol and drugs. He stated that the alcohol he consumed only stayed in his system a day or two, and that is why it was not detected during his tests. He has control of his drinking and no longer gets intoxicated. The last time he was intoxicated was in January 2022, the night of his arrest. (Tr. 24-25, 28-29; GE 4)

Applicant testified that the last AA meeting he attended was in October 2023. He stated he intends to continue his AA meetings because "it's made [him] realize if [he] continue[s] down that path then it's not a good life to be going through after hearing all these stories of what everyone goes through. And it's not the life that [he] want[s] to live...." He also admitted he received a court-ordered substance abuse assessment, but he did not know any of the details of his evaluation. He stated he would try to obtain a copy of the substance abuse assessment as well as substantiating documentation that he successfully completed his probation in early December 2023. He would submit these documents while the record was held open. However, no documentation was received while the record was held open. (Tr. 25, 36-39)

Applicant admitted during the hearing that he continued to consume alcohol which was in violation of his probation:

JUDGE: Okay. So your probation, did your probation require you to abstain from using alcohol?

APPLICANT: Yes.

JUDGE: So you did not abstain using alcohol during your period of probation. You violated your probation, isn't that correct?

APPLICANT: Yes.

JUDGE: Okay. And you said you would drink alcohol like on holidays or whatever. Why would you do that if you knew that violated your probation?

APPLICANT: I don't know. Just poor -- I don't know. I just did. I mean, it was poor judgment on my part. (Tr. 45)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2 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." 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 Executive Order 10865 provides that an adverse decision 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 Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline G: 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 conditions that could raise a security concern and may be disqualifying 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; 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.

The record evidence establishes AG ¶¶ 22(a), and 22(c). Applicant was involved in three alcohol-related offenses in 2011, 2016, and 2022. He had a substance abuse assessment following his January 2022 arrest, and he continued using alcohol in violation of the terms of his probation.

AG ¶ 23 lists three 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; and

(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.

Applicant was involved in two recent alcohol-related arrests where he registered alarmingly high BAC readings that were well above the legal limit. Following his January 2022 offense, there was a court-ordered requirement that he abstain from using alcohol during his probationary period, to which he agreed, and he was to obtain a substance abuse assessment. He failed to remain alcohol-free, as required, even though he was administered urinalysis tests throughout his probation period. He claimed he successfully completed his probation about one week prior to his hearing.

Applicant bears the burden of production and persuasion in mitigation. He failed to provide supporting documentation of his successful completion of probation. He also did not provide a copy of his recent substance abuse assessment. Without this evaluation, I am unable to determine whether Applicant was diagnosed with an alcohol-related disorder, recommended to participate in additional substance abuse counseling or treatment, or whether he was given a favorable assessment.

Applicant also provided inconsistent information during the security clearance process that calls into question his credibility. I believe more time is needed to establish successful rehabilitation. He admitted after his first OVI arrest in 2016, he was able to moderate his consumption of alcohol for awhile until he slid back into his old drinking habits. In August 2022, he stated that he intended to abstain from alcohol. At some point after that statement and while on probation, he changed his mind and started consuming alcohol. Overall, I find that Applicant failed to mitigate the alcohol consumption security concerns.

### **Guideline J: Criminal Conduct**

The security concern related to the criminal conduct guideline 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 lists conditions that could raise a security concern and may be disqualifying. Three potentially apply:

(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;

(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

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

The record evidence establishes AG ¶¶ 31(a), 31(b), and 31(d). Applicant was involved in four alcohol or drug-related offenses in 2011, 2016, and 2022, and he continued to consume alcohol in violation of his probation requirement.

AG ¶ 32 lists two conditions that could mitigate the 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; 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 criminal conduct is disconcerting and recent. He claimed that he was just released from probation a week before his hearing. Applicant did not submit any evidence of rehabilitation, such as proof that he fulfilled all of the court-ordered conditions, or that he is no longer on probation.

There is insufficient evidence in the record to demonstrate that Applicant's alcohol-related conduct will not recur. I find that more time is needed to ensure that he does not repeat this behavior since he admitted he previously returned to his old drinking habits following his 2016 arrest. Not enough time has passed to demonstrate he is fully rehabilitated. As such, his criminal behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Applicant failed to establish mitigation under the above mitigating conditions.

### **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) 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 national security eligibility must include 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 into my whole-person analysis.

In 2016 and 2022, Applicant was involved in two alcohol-related offenses with high readings of BAC that were well above the legal limit. To his credit, he has reduced his consumption of alcohol. He made a poor decision, however, to consume alcohol during his period of probation which required he abstain from drinking. He did not provide sufficient documentation to mitigate the concerns in this case. Not enough time has passed to demonstrate that Applicant's excessive use of alcohol will not recur, and there is insufficient evidence in the record to show that he is successfully rehabilitated.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. As such, Applicant failed to mitigate the security concerns arising under alcohol consumption and criminal conduct.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b and 1.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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 interest to grant Applicant a security clearance. National security eligibility is denied.

Pamela C. Benson  
Administrative Judge