



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00889
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Sakeena Farath, Esq., Department Counsel  
For Applicant: *Pro se*

02/29/2024

**Decision**

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). Applicant has mitigated the Government's security concerns under Guideline G and Guideline J. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 22, 2021. The Department of Defense (DoD) sent him a Statement of Reasons (SOR) dated July 25, 2023, alleging security concerns under Guideline G and Guideline J. The DoD acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant submitted an Answer to the SOR and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case

on October 18, 2023. On October 19, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on November 21, 2023, and provided a Response.

The SOR and the Answer (FORM Items 1 and 2) as well as Applicant's Response are the pleadings in the case. FORM Items 3 through 7 were offered as evidence and are admitted into evidence without objection.

### **Findings of Fact**

Applicant admitted all allegations. His admissions and explanations in his Answer and Response are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 46 years old. He has been married twice. His first marriage was from June 1999 to March 2003 and his second marriage of over ten years ended in October 2015. He has one adult-aged child and another who is a teenager who lives with her mother. He earned a bachelor's degree in 2010 and a master's degree in 2020. He retired honorably from the Air Force after 20 years of service. He held a security clearance for most of his 20 years of military service. He has been with his sponsor since June 2020 and has not had any incidents. (Item 3 at 7, 13-14, 21, 24-15, 27-28, and 45-46.)

#### **Guideline G – Alcohol Consumption.**

**SOR ¶ 1.a:** Applicant admits that in January 1997, at age 17, he was arrested and charged with Battery/Bodily Harm and Possession of Liquor by Minor. He cites over 20 years without an alcohol-related incident as mitigation. (Item 3 at 3740; Answer; Response.)

**SOR ¶ 1.b:** Applicant admits that in March 2000, he was arrested and charged with controlling a vehicle while drunk on a military base. He cites over 20 years without an alcohol-related incident, along with a 20-year military career as mitigation. (Item 3 at 37-40; Answer; Response.)

**SOR ¶ 1.c:** Applicant admits that between November 1998 and July 2000, he was charged with a violation of Article 15 under the Uniform Code of Military Justice for driving while intoxicated. He cites over 20 years without an alcohol-related incident, along with a 20-year military career as mitigation. (Item 3 at 37-40; Answer; Response.)

Applicant states he grew up in a small town and alcohol consumption was a common place occurrence. He notes in his Answer and Response that he did conform his life to societal norms and despite these incidents early in his military service he went on to have a successful twenty-year military career. He notes he completed the classes the military required him to take after his alcohol-related incidents and that he was not

directed to seek out any additional treatment from health care professionals. He notes the life he led in his early twenties is not the life he lives anymore, and he limits his drinking to be in line with societal norms. He acknowledges over the years having driven home after drinking. (Item 3 at 37-40; Item 4 at 5; Answer; Response.)

#### Guideline J – Criminal Conduct

**SOR ¶ 2.a:** Applicant admits that in March 1995, at age 17 he was charged with Sexual Assault - Felony and Sexual Misconduct - 1st Misdemeanor. (Item 4 at 6.) He denies the accusation and states in his Response the accusation was false. He was interviewed about an allegation but never went to court and never heard anything further after the interview by law enforcement. In his interrogatory responses that he cites that he was allowed to enlist and states he took a DoD polygraph for his initial security clearance and was determined to be answering honestly and was approved for a security clearance. (Item 3 at 45; Item 4 at 6-7, 12, 25; Answer.)

**SOR ¶ 2.b:** Applicant admits that in May 2000, he was arrested and charged with Battery - 3rd Degree, and Criminal Mischief - 1st Degree. He cites over 20 years without a similar incident, along with a 20-year military career as mitigation. (Item 3 at 37-40; Answer; Response.)

**SOR ¶ 2.c:** Applicant admits that in 2016 while on active duty he was charged with a violation of the Uniform Code of Military Justice, Article 112a, for wrongfully using marijuana (not normally a proper noun or capitalized) and testing positive on a command urinalysis. He accepted non-judicial punishment (NJP). At NJP he was reduced one rank and remained on active duty until he retired honorably. (Item 3 at 17, 21-22.) During this same time period in 2016 he had three traffic-related stops for excessive speed, two were dismissed and one he pled guilty. (GE 7.) In his Answer he offered an explanation for his conduct. He noted that in the year leading up to his use of marijuana he went through a divorce, moved 1,000 miles away from his children due to military reassignment, and became primary caretaker of his terminally ill mother who passed away that same year. He states he was not “in the best mental condition” at the time but he believes he has grown from the “from the situation.” (Item 3 at 18-19, 25, 26-27, 42; Answer.)

**SOR ¶ 2.d** cross-alleges the allegations set forth in subparagraph 1.a through 1.c above. See the above finding of facts for subparagraph 1 a. through 1 c. above.

#### Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

## 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 several conditions that could raise security concerns under AG ¶ 22. The following disqualifying conditions are 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.

1.c. Applicant acknowledges the alcohol consumption alleged in SOR ¶¶ 1.a through

The following mitigating conditions under AG ¶ 23 are 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; and

(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.

AG ¶ 23(a) is established. Applicant's history shows numerous alcohol-related incidents between 1996 and 2000. He served 18 years on active duty without another alcohol incident and since retirement in 2018 from the military there has not been an alcohol-related incident. Given the amount of time that has passed it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or judgment.

AG ¶ 23(b) is established. Applicant admits the incidents. He cites the time since the incidents, his completion of the requisite classes, his lifestyle changes to bring his drinking in line with societal norms, and his honorable military service until retirement from

the military. Sufficient time has passed to demonstrate he has overcome this problem and he has demonstrated a clear and established pattern of modified consumption.

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

AG ¶ 30 expresses the security concern for 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. Block quote.

31: The following disqualifying condition is potentially applicable as detailed in AG ¶

(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's three alcohol-related convictions are cross-alleged under the criminal conduct guideline. He admitted the disorderly conduct and marijuana use events but denied the conduct alleged in SOR ¶ 2.a but acknowledges the charge. The above disqualifying conditions apply.

32: The following mitigating conditions are potentially applicable as detailed in AG ¶

(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.

AG ¶ 32(a) and (d) apply for the same reasons set forth under Guideline G. Applicant's actions prior to 2016 are mitigated by time. There is no record of prosecution of SOR 2.a. He was allowed to enlist, and he was subjected to a polygraph concerning the incident. He held a security clearance for most of his career until his 2016 NJP. The 2016 incident is isolated around several life events. After the NJP he continued to serve and retired honorably two years later. He has established a record of accomplishment of responsible behavior and compliance with rules, regulations, and the law since the 2016 incident.

## Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines G and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines G and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has met his burden to establish he has mitigated the security concerns raised by his alcohol consumption and criminal conduct. Eligibility for access to classified information is granted.

### Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale  
Administrative Judge