



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00117
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: Rendal B. Miller, Esq.

02/28/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 11, 2023, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 30, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on October 20, 2023. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 10 (Item 1 is the SOR). Applicant responded to the FORM, and provided documentary evidence marked as Applicant Exhibit (AE) A through E. There were no objections to any of the evidence offered, and it is admitted in evidence. Applicant's attorney provided a response brief, which is marked as Hearing Exhibit (HE) I. The case was assigned to me on January 9, 2024.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.f and denied the allegations in ¶¶ 1.g through 1.j. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 61 years old. He married in 1991 and divorced in 2003. He remarried in 2004. He has four children ranging in ages from 32 to 16. He has worked for his present employer, a federal contractor, since February 2022. He worked for other federal contractors from 2010, except for a short period of unemployment in December 2021, to February 2022. (Item 3)

Applicant was interviewed by a government investigator in February 2009. In May 2023, as part of government interrogatories, he authenticated the accuracy of the summary of his February 2009 interview. During his interview, he reported he had been arrested five times for DUI in the past and that he had a drinking problem for the past 25 years. At the time, he said he was attempting to reduce his alcohol consumption, and he had reduced it since his 2006 DUI arrest when he consumed four or five beers prior to riding his motorcycle before he was arrested. The DUI charge was reduced to reckless driving after he completed the terms of his sentence. (Items 4, 7, 10)

Applicant disclosed to the investigator a 2001 DUI arrest. He said he had consumed alcohol to excess and was involved in an accident. He was uncertain as to how much he had consumed, but he believed it was between six and nine beers over a two-to-three-hour period. He told the investigator the charges were dismissed due to a technicality. (Items 4, 10)

Applicant discussed with the investigator a 1993 or 1994 DUI arrest after consuming alcohol to excess, when he was stopped by police for speeding. He paid a fine and performed community service. He further disclosed he was arrested for DUI in 1989 after he consumed alcohol to excess and had used marijuana. He was sentenced to 30 days in jail. He also disclosed he was arrested for DUI in 1986 but could not recall the details. (Item 4, Item 10 page 3)

Applicant told the investigator said he had consumed six to nine beers on average three to four times a week prior to 2006 when he was last arrested for DUI. Since then, he consumed two to three beers two to three times a week. He uses alcohol to relax and enjoys drinking beer after work. He considered himself an alcoholic in the past but did not at the time of his 2009 security interview. He said he has worked on his own to reduce

his alcohol consumption. He said because he was newly married with children he can not be intoxicated when he cares for his children. His intention at that time was to continue to consume alcohol socially. (Item 10 page 4)

On August 18, 2021, Applicant voluntarily sought alcohol treatment and participated in an inpatient program until September 9, 2021. A response for his medical records is dated September 2022. The treating physician stated at the time of discharge from treatment in September 2021, that Applicant was “in remission of his symptoms at discharge. Conditions of symptoms are unknown to us since then.” His prognosis was positive. (Item 9 page 18) Applicant provided a statement with his August 2022 interrogatories. He said, “I do not drink alcohol. I got carried away with my drinking during the COVID lock down and working from home. I have corrected that now.” The statement is undated. (Item 9)

Applicant’s inpatient treatment records show he was diagnosed with Alcohol Use Disorder by a qualified medical professional. He disclosed to the doctor that he was self-referring for treatment after years of heavy alcohol consumption and unsuccessful attempts to quit. He provided a history of his past alcohol abuse which began with heavy drinking in 2012. He consumed a six-pack of beer (12 ounces) together with a half bottle of hard liquor daily. This pattern continued for seven years uninterrupted. In 2019, he tried to quit alcohol consumption on and off unsuccessfully. In 2020, he was able to stop alcohol consumption for six months. He told the doctor that he attended AA for six to eight weeks, but he did not benefit from it. He started consuming alcohol again after six months of sobriety. His consumption gradually and then drastically increased. Upon admission into the treatment program, he was consuming a six-pack of beer plus a half bottle of hard liquor each day during the weekend and a reduced amount two to three days during the week. He reported his drinking was causing significant problems with his family and work with the potential of separation/divorce from his wife and unemployment. Prior to admission, Applicant reported he had been drinking heavily for four days straight. (Items 9, 10)

Applicant was in a locked unit for assessment, detoxification, and monitoring of withdrawal symptoms. He was provided medication to help him with his withdrawal symptoms. After he was medically stable and his withdrawal symptoms improved, the medication was discontinued, and he was transferred to an open unit to “start a rigorous substance use treatment.” The report of treatment stated that he was integrated into a multimodal treatment program which included intensive psychotherapy, occupational therapy, art therapy, and physiotherapy, as well as medical optimization, daily visits by the psychiatry team, and a through medical evaluation to rule out medical diagnoses. (Items 9, 10)

The treatment report stated that Applicant’s intervention followed a substance use specific protocol, which targeted cessation, maintenance of abstinence, and relapse prevent. (emphasis added) Acamprosate was added to his medication regime to aid with reported cravings. The treatment report further stated:

Upon discharge, [Applicant] denies cravings and urges to drink, as well as withdrawal symptoms. He expressed confidence in his ability to **maintain abstinence** and use relapse prevention strategies. **We recommend that he continue taking Acamprosate to help with cravings and use the skills that he learned during admission to maintain abstinence.** We recommend he follows-up with outpatient psychotherapy as needed **and/or at least once every three months to aid in his recovery.** (emphasis added) (Item 10 page 28)

Additional notes from the treatment report for Applicant's inpatient treatment stated:

We discharged [Applicant] to his home on 02.09.2021 without any indication of acute danger to himself or others and free of suicidal tendencies. **We recommend the continuation of the medication with regular checks of the associated laboratory parameters and the ECG in the context of regular check-ups by general practitioners and neurologist.** (emphasis added) (Item 10 page 30)

In August 2022, Applicant completed government interrogatories. He was asked if he currently consumed any alcohol and he responded "no." (Item 9 page 2) He was asked why he stopped drinking and he stated:

I started to drink more often and a little more than I should have during the COVID 19 lock down. I stopped because I love my family and wife. I decided to take alcohol out of the equation and stop drinking for a healthier family lifestyle. (Item 9 page 2)

Applicant further disclosed he was taking medication to help him abstain from drinking on an as needed basis. When asked if he intended to consume alcoholic beverages in the future, he responded "no." He disclosed he had inpatient alcohol treatment from August 2021 to September 2021 and his aftercare was "as needed" and there was no follow-up required. He reported his last consumption of alcohol was in November or December 2021. This consumption was after his inpatient treatment. (Item 9)

Applicant completed government interrogatories on May 7, 2023. In them, Applicant responded "yes" to the question that asked if he currently consumed any alcoholic beverage. He disclosed he drank one to two Saturdays a month and would have one to two beers or wine each time. He stated he last consumed alcohol on April 29, 2023. He was asked if he had consumed alcohol to intoxication since November 2021 and he said "no." (Item 10 page 12)

The SOR alleged and Applicant admitted in his SOR answer and during his background investigation the following:

1.a: In or around January 1983, you were arrested and charged with public intoxication after the police found alcohol in your vehicle, which you totaled after falling asleep while driving. (Items 4, 10)

1.b: In about October 1986, you were arrested and charged with driving under the influence (DUI). (Items 2, 3, 10)

1.c: In about October 1989, you were arrested and charged with (1) DUI of liquor or drugs, and (2) controlled substance, possession prohibited. (Items 5, 9, 10)

1.d: In or about January 1993, you were arrested and charged with DUI. (Item 10)

1.e: In or around October 2001, you were arrested and charged with DUI. (Item 10)

1.f: In or around April 2006, you were arrested and charged with DUI. (Items 7, 10)

Applicant denied SOR ¶ 1.g which alleged that around May 2008, he was arrested and charged with domestic battery-violence following an altercation with his spouse. Prior to the altercation, it is alleged he consumed approximately four to five beers over the course of a couple hours. He explained in his SOR answer that the district attorney declined to file charges or to prosecute because there was insufficient evidence. He admitted he had a marital dispute and the police arrived and it was clear someone was going to jail, which was him. The police report shows his wife called the police because she was scared. She later refused to cooperate and testify so the case was dismissed. In his 2009 background interview, he admitted to consuming four to five beers before the incident. (Items 4, 10 at page 6)

Applicant denied in his August 2023 answer to the SOR, the allegation in ¶ 1.h which alleged that he received inpatient treatment from about August 2021 to September 2021 for a condition diagnosed as Alcohol Use Disorder. Upon discharge it was recommended that he continue to take prescribed medication to help cravings of alcohol and to abstain from consuming alcohol. In his SOR answer, he admitted he received inpatient treatment in 2021. He said at discharge he was advised to take his medication for a period of time after discharge, but not to take it indefinitely. He explained the medication prescribed, Acamprosate, is not for long term use. He was advised to take it as needed to curb his alcohol cravings. He further stated: "The issue was stopping the drinking, and that happened. More importantly, I have continued to attend A[coholics] A[nonymous] meetings online and have used Celebrate Recovery study aids." (Item 2) The treatment report as noted above states he was to abstain from alcohol consumption and follow-up as needed or at least every three months. (Item 2)

Applicant denied in his SOR answer ¶ 1.i which alleged in approximately December 2021 he resigned in lieu of being terminated from employment after his supervisor allegedly smelled alcohol on his breath when he reported to work. He explained in his SOR answer that he was forced to resign because his supervisor made false allegations against him, and he did not want the allegations to negatively impact

him. He adamantly denied the allegation. He told his supervisor that he did not drink on the day in question and the person he was with that day provided a statement confirming that while in his presence, he did not observe Applicant consuming alcohol. Applicant stated he was not afforded the opportunity to defend himself or take a blood test to prove his innocence, which he believed would have exonerated him. He believes his supervisor was looking for an excuse to fire him because his employer had tried to reduce his wages when he was in a contract for a specific wage. There is insufficient evidence to conclude that Applicant consumed alcohol that day. I find in his favor on this allegation. (Item 2)

Applicant denied SOR ¶¶ 1.j and part of 1.h that alleged that he continues to consume alcohol, and that he has failed to take his prescribed medication to help alcohol cravings and abstention in accordance with his treatment advice and recommendations. (Item 2)

Applicant stated in his August 2023 SOR answer, “I will admit that [I] struggled in the past and currently struggle with alcohol, I am an alcoholic and I must work every day to keep my sobriety. I drink occasionally if we have an event to attend, I will have a beer or glass of wine.” In addition, he stated: “I am doing what I was taught and keeping myself sober from excessive alcohol use.” “I will admit it is a daily struggle, but it is one that I am winning and will continue to win.” He further stated:

I attended inpatient treatment, I have followed that up with continued after care treatment including AA meetings and the Celebrate Recovery program. I made the requisite changes and have not had any other law enforcement involvement. This is a clear change from the previous pattern of DUIs. (Item 2)

Applicant did not provide any supporting evidence that he is abstaining from alcohol, attends AA, or is in a recovery program. His attorney provided a brief in response to the FORM. It is dated November 17, 2023. Included and attached to the brief is an affidavit from Applicant dated November 17, 2022. I believe this is a typographical error and the affidavit is from 2023. In the affidavit, Applicant states the following:

I am in compliance with the treatment that has been recommended to me by medical professionals for my previously-diagnosed alcohol use disorder.

I have been given permission to drink alcohol in reasonable amounts from my medical providers, based on the success of my treatment for alcohol use disorder.

I no longer have cravings for alcohol.

I am currently abstaining from using alcohol, and I am willing to continue to do so if the Administrative Judge believes it is the best way to minimize any security risks I may pose. (AE A)

Applicant did not provide any supporting documents from a medical professional telling him he had permission to drink alcohol in reasonable amounts based on the success of his treatment. He did not provide any corroborating evidence that he is in compliance with his treatment plan for alcohol use disorder. He did not provide any corroborating documentation showing a treatment plan by a medical professional for his previously diagnosed alcohol use disorder and that it permits him to consume alcohol. The only treatment plan submitted was that from his 2021 in-patient treatment.

## **Policies**

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 EO 10865 provides that 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

AG ¶ 21 expresses the security concerns for 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 describes conditions that could raise security concerns and may be disqualifying. I find the following to be potentially applicable:

(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;

(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;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

There is substantial evidence<sup>1</sup> to conclude that in about 1983 Applicant was arrested and charged with public intoxication after the police found alcohol in his vehicle,

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<sup>1</sup> Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See, e.g., ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).



which he totaled after falling asleep while driving. In about October 1986, he was arrested and charged with DUI. In around October 1989, he was arrested and charged with DUI and possession of a controlled substance. In around January 1993, October 2001, and April 2006, he was arrested and charged with DUI. In about May 2008, he was arrested and charged with battery-domestic violence following an altercation with his wife after he had consumed four to five beers over the course of a couple hours. He received inpatient treatment from August 2021 to September 2021 and was diagnosed with Alcohol Abuse Disorder by a qualified medical professional. Upon discharge it was recommended he continue taking his prescribed medication to help with alcohol cravings and to abstain from alcohol consumption. He continues to consume alcohol and has failed to adhere to the treatment advice and aftercare recommendations. The above disqualifying conditions apply.

I find there was insufficient evidence to conclude that Applicant was drinking before he was terminated from his employment. I find in his favor in SOR ¶ 1.i.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

- (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.

After completing inpatient treatment and understanding the goal of his treatment was abstinence, Applicant's treatment report stated:

[Applicant] expressed confidence in his ability to **maintain abstinence** and use relapse prevention strategies. **We recommend that he continue**

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**taking Acamprosate to help with cravings and use the skills that he learned during admission to maintain abstinence. We recommend he follows-up with outpatient psychotherapy as needed and/or at least once every three months to aid in his recovery.”** (Item 10)

In addition, the treatment report stated:

**We recommend the continuation of the medication with regular checks of the associated laboratory parameters and the ECG in the context of regular check-ups by general practitioners and neurologist.** (Item 10)

Applicant has not provided evidence that his treatment plan has been revised by a medical professional, and he is now permitted to consume alcohol at a reasonable rate. He failed to provide any corroborating documents to show he is on a new treatment plan. Beyond his statements, he failed to provide evidence that he is attending AA, or that he is participating in a recovery program. Applicant was to remain abstinent. Consistent with his past history, he stops consuming alcohol for a period, but then resumes. He has provided statements to the government saying he is not consuming alcohol only to be followed by later statements saying he is consuming alcohol.

The evidence does not support that Applicant has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. He did not provide current objective information or documentary proof that he is participating in counseling, treatment, or attending AA. The evidence shows he has a history of abstinence and then relapses. Although, he acknowledges his problems with alcohol, he has also provided inconsistent statement as to his willingness to abstain. He believes he can continue to consume alcohol, but also promises to abstain. This is inconsistent with his treatment plan. He has been suffering for years with alcohol dependency and based on his history, it is likely to recur.

Applicant's latest statement says he is permitted to use alcohol, but he will abstain in order to maintain his security clearance. He admitted to consuming alcohol as late as April 2023. In addition, based on his repeated relapses, it is too soon to conclude another relapse is unlikely to recur. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about whether he continues to consume alcohol, his attendance at AA, his adherence to his treatment plan, and other matters to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). I find none of the Guideline G mitigating conditions apply.

### **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 the 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis.

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.” Applicant failed to meet his burden of persuasion. After weighing the disqualifying and mitigating conditions under Guideline G and evaluating all the evidence in the context of the whole person, I conclude Applicant failed to mitigate the security concerns under the alcohol consumption guideline.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge