



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



In the matter of:)	
)	
)	ISCR Case No. 22-02029
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelly, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines G (Alcohol Consumption) and J (Criminal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on June 5, 2017. On November 9, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and 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 answered the SOR on March 2, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 27, 2023, and

the case was assigned to me on September 11, 2023. On October 12, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 25, 2023. On October 23, 2023, Applicant's counsel submitted a notice of withdrawal. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through AE K, which were admitted without objection. I left the record open until November 8, 2023. Applicant submitted a release of probation (AE L) and a video (AE Video). The Government did not object to either exhibit. DOHA received the transcript (Tr.) on November 9, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 25-year-old network administrator (IT) employed by a defense contractor since December 2020. He was born in August 1997. He graduated high school in 2015 and served on active duty from April 2017 until June 2019, when he received a general under honorable conditions discharge. He held a security clearance while on active duty. He married in October 2023. (GE 1; Tr. at 13, 68.)

Applicant stated he started drinking when he turned 21. (Tr. at 21-22.; AE E at 3.) He told the government investigator during his security clearance interview the same. (Tr. at 22; GE 2 at 5.) When asked again when he started drinking, he stated "I do not have an exact date, Your Honor, Department Counsel. I do not have an exact date of when I started drinking." After explaining that an exact date was not required Applicant stated "when I joined the military, joined the Navy, that is when I started drinking. It wasn't exactly when I joined, it would have been towards getting to my first duty station at [Installation X], I got with shipmates." He was not yet 21 based on the date he arrived at his first duty station. (Tr. at 24-25; GE 1.)

On New Year's Eve December 2017, Applicant was celebrating with shipmates at a bowling alley. He was drinking rum mixed with soda pop from cups. (Tr. at 22.) He consumed enough alcohol that he does not recall what happened. He learned he had become belligerent and physical. He was arrested and charged with intoxicated public disturbance, malicious destruction of property, and intoxication endangerment. He went to court in June 2018 and paid restitution for the items he broke in exchange for the charges being dropped. (GE 2 at 5.) This incident was alleged in SOR ¶ 1.c and cross alleged in SOR ¶ 2.a.

In September 2018, he was deployed from his shore command to a ship to provide IT support on an upcoming deployment. He became intoxicated while hanging out with shipmates around the "smoke pit" located about 500 to 1,000 feet from the ship, which was at the pier. (Tr. 34; GE 3.) He was drinking rum and became intoxicated. When he returned to the ship, he became belligerent and violent and had to be zippered tied and left to calm down. (GE 3 at 8-9.) He was escorted off the ship and returned to his command at Installation X and in November 2018, he was taken to nonjudicial punishment (NJP) for

violation of Article 134 of the Uniform Code of Military Justice (UCMJ), drunk and disorderly conduct for his conduct in September. He received forfeiture of ½ month's pay for two months, reduction in rank (suspended for six months), and was required to attend alcohol rehabilitation, which he completed. (GE 3 at 1, 2; AE H at 4.) He was informed he would be separated if any further alcohol related incidents occurred. He modified his behavior for a period of time working out and playing video games and completing his 12 weeks of alcohol rehabilitation classes. (Tr. at 39, 42.) This incident was alleged in SOR ¶ 1.b and cross alleged in SOR ¶ 2.a. In March 2019, as part of St. Patrick's Day celebrations, he participated in a "bar crawl." (Tr. at 45.) When he returned to Installation X intoxicated, he was disturbing the barracks and not abiding the direction of the petty officer on duty. He was administratively separated from the Navy following this incident. (Tr. at 46.)

After separating from the Navy, he acknowledged his drinking did pick up. It went from, "maybe once a month with buddies to every weekend." (Tr. at 47.) During the work week his work hours left "no room" to drink, but on the weekends, he drank in excess. (Tr. at 47.) About three to four months after being separated from the Navy he met his now wife. (Tr. at 47.)

In August 2020, Applicant was arrested for police officer assault, resisting arrest, obstruction, and operating a vehicle while impaired. He was found guilty of operating a vehicle while impaired. The incident occurred after a day on a boat with his then girlfriend and his family. He and his stepfather got into a family argument about his life events and choices. (Tr. at 49.) He left "to go cool off" because he was "upset" but he did not realize how impaired he was. (Tr. at 49; GE 4 at 1.) His vehicle left the road and struck a telephone pole. He struck his head during the accident. When the emergency services arrived, he was being treated when he was grabbed from behind by a police officer. He pulled away from the officer and was taken down by several police officers and handcuffed. He subpoenaed the videos and pled not guilty to police assault charges. He showed the videos during his court case, which showed he fell on a police officer after a police officer had grabbed his arm from behind. (Tr. at 53-54; GE 4 at 29; AE Video.) A screenshot of the incident is marked as AE M. The video is available for viewing. I considered the dialogue between the police officers at the end of the video for the limited purpose of assessing Applicant's actions on the safety of others, which was the context of the police officers' discussion. The only charge from the incident that resulted in a conviction was impaired driving. (Tr. at 54-55.) His blood alcohol count (BAC) was 0.176. (Tr. at 51; GE 4 at 22.) This incident was alleged in SOR ¶ 1.a and cross alleged in SOR ¶ 2.a. His court case was decided in October 2020. He was placed on probation for 12 months. He completed a substance abuse evaluation as part of his probation and after two months he was released from probation. (Answer at 3; AE H at 4; AE J; AE K; AE L.)

Applicant was given a substance abuse life circumstance evaluation on September 8, 2020, and diagnosed as having a severe alcohol use disorder. (Answer at 3; Tr. at 60-61.) He testified his wife had a hard talk with him about where he would be in 20 years, which made him realize he needed to make changes because she was right. (Tr. at 61.) His last offense, impaired driving, had cost him a job requiring a clearance for a Federal Department so he had to work at a department store "to bring some money to the table." (Tr. at 62.) He also started Alcoholics Anonymous (AA) in either December 2020 or January 2021

because he realized that he had a problem and needed to do something about it. (Tr. at 61, 63.) He attended 12 to 15 AA meetings over the course of several months. He testified he did not crave alcohol. What he came to realize he did not know how to limit his drinking when he got in party like situations. (Tr. at 63.) The biggest life change he felt he needed to make was “sobriety, not drinking at all.” (Tr. at 63.) He stated “it was actually an easy thing to cut out of my life it was just the times that I did and when I overdrank is when I, you know, would have incidents and so I've completely cut that out of my life. I've been sober for three years.” (Tr. at 64-65.) The last time he drank was in August 2020, the day of the accident. (Tr. at 65.) He has changed his lifestyle. He goes to the gym regularly, he plays video games to keep stress out of his life, and focuses on his wife, his best friend. He avoids bars and does not go out on Friday nights the way he had in the past. His family and friends and know he does not drink. (Tr. at 66.) He has developed a sober support network consisting of his wife, brother, his parents, and his in-laws. He describes his parents, mother-in-law, father-in-law, wife and brother as his biggest supporters by keeping tabs on him and checking in on him. They purposely find different activities that do not involve alcohol. (Tr. at 70.)

Since the 2020 incident Applicant has had no infractions, “not even a traffic ticket.” He cites that he has paid all his fines from his past actions. He completed a psychosocial exam in February 2023 to have a comparison from the exam in 2020. (Tr. 74.) The therapist he saw was very comforting and turned his normal negative look on therapy to wanting to attend more. (Tr. at 74.) The evaluation assessed him to have an unspecified adjustment disorder, no addiction treatment needed, and that he did not meet the American Society of Addiction Medicine (ASAM) criteria for any level of care. His level of substance impairment was assessed as “low” based on presenting minimal consequences in the major life domains. (AE E at 9-10.)

Applicant submitted four character letters. (AE A – AE D.) Three letters were from work colleagues, each with about two years of observation. Each person was aware of why they were submitting letters on his behalf. His colleagues described him as an individual who displayed a high degree of integrity, responsibility, reliability, and good judgment and they found him to be stable, ambitious, and trustworthy. They all work with him in sensitive areas and expressed their confidence in him maintaining the integrity of classified systems. (AE A; AE C; AE D.) His then fiancée, who holds a position of public trust, focused on how he conducts his personal life and how they now live a healthier lifestyle. She noted he is passionate about his career and strives to better himself in his field. (AE B.)

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 under this guideline 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.”

Applicant’s admissions and the documentary evidence establish two potentially disqualifying conditions:

AG ¶ 22(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

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and

AG ¶ 22 (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.

The following mitigating conditions are potentially relevant:

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; and

AG ¶ 23(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 (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.

Applicant acknowledges his alcohol problem. He has changed his lifestyle to make the behavior unlikely to reoccur. He has established three years of sobriety and abstaining from alcohol. He successfully completed his assigned classes and programs. He has demonstrated a clear and established pattern of abstinence and now presents a low risk.

Guideline J, Criminal Conduct

The concern under this 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.” Applicant’s record of arrests and convictions is sufficient to establish the following

potentially disqualifying conditions:

AG ¶ 31(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; and

AG ¶ 31(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.

The following mitigating conditions are potentially relevant:

AG ¶ 32(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

AG ¶ 32(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.

Sufficient time, over three years, has elapsed since Applicant last criminal offense. He has changed his lifestyle such that it is unlikely that his alcohol-related misconduct will reoccur. He has complied with the terms of his sentences, he has maintained a good employment record, and has created a favorable home environment as part of his rehabilitative steps. The mitigating conditions are established.

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 timely 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. Applicant has worked in a sensitive work environment for the past two years, earning the respect and confidence of his work colleagues who wrote on his behalf. He has taken the initiative to change his lifestyle. He proved that he is reliable and trustworthy and demonstrates good judgment. I have incorporated my comments under Guidelines G and J and evaluated all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his alcohol consumption and criminal conduct.

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
Subparagraph 2.a:	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