



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



In the matter of:)
)
) ISCR Case No. 21-00606
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro Se*

10/13/2023

Decision

Hyams, Ross D., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 15, 2020. On June 26, 2021, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). Applicant responded to the SOR on August 15, 2021 and requested a hearing before an administrative judge. The case was assigned to another administrative judge on August 17, 2022. Due to a scheduling conflict, the case was transferred to me on February 28, 2023.

The hearing was convened as scheduled on March 3, 2023. Department Counsel submitted Government Exhibits (GE) 1-6, which were admitted in evidence without objection. Applicant's Exhibits (AE) A-D were admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted all SOR allegations with detailed explanations. His admissions and explanations are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 37 years old. He earned an associate degree in 2008, and a bachelor's degree in 2020. He was married in 2013, and divorced in 2022, and is currently engaged. He works as a structural mechanic. He has been working for defense contractors since 2014 and has been with his current employer since 2020. (Tr. 17-20; GE 1; AE C)

Applicant has played pool (billiards) on teams and in leagues since at least the mid-2000's. These games and competitions were often held in bars. He reported consuming some alcohol while playing pool. He claimed that he had a couple of drinks to loosen up, and then switched to soft drinks for the rest of the evening. (Tr. 37-49)

Applicant reported that his father was an alcoholic and introduced him to irresponsible drinking at 14 years old. After his first two Driving Under the Influence (DUI) arrests in 2008, he attended alcohol and substance abuse education classes in 2009 but has not attended substance abuse counseling or treatment. In these classes, he learned about responsible drinking and how long to wait before driving after consuming alcohol. He stated that he adopted the formula that if he was drinking in the evening, he would not drive until the next day. He stated that he abstained from alcohol for about a year and a half, until his DUI cases were adjudicated in 2010. He reported in his background interview with a government investigator, that he started drinking again in 2011 and by 2016, he had resumed drinking three to four times a week, with six to eight mixed drinks one or two nights on weekends. He reported that his use of alcohol increased during periods he was playing pool, and it decreased during periods he had long commutes to work. (Tr. 32, 49-55; GE 2)

The SOR alleges under Guideline G seven alcohol related arrests, including three DUI arrests. The status of the allegations is as follows:

SOR ¶ 1.a: In November 2005, Applicant was arrested and charged with minor possession/purchase liquor. Applicant reported that he lived in a college dorm that was supposed to be alcohol free. He claimed that when alcohol was found in a common area, all of the residents were charged with minor in possession of alcohol. He asserted that it was not his alcohol. He stated that he was dismissed from the dorm and put under probation by the school. He asserts that the officer did not show up and the case was dismissed. He also appealed his case with the college and was allowed to return to the dorm. (Tr. 24-28, 35-37, 83-84; Answer)

SOR ¶¶ 1.b and 1.d: In October 2008, Applicant was arrested and charged with DUI. In March 2010, Applicant was arrested and charged with reckless driving. Applicant

reported that these were the same incident. The October 2008 DUI charge was converted to reckless driving in March 2010. Applicant reported in his background interview that in 2008 he was driving while intoxicated on a nightly basis. He testified that in October 2008, he had been drinking while playing pool on the night that he was arrested for DUI. He stated that he was surprised that the few drinks that he had consumed put him over the legal limit. He was pulled over for speeding and was given a breathalyzer test. He reports that he blew a .087 on the breathalyzer, and the legal limit was .08. He claimed that he abstained from drinking alcohol after this DUI arrest, his second in 2008, until the DUI cases were adjudicated in 2010, and that he drank soft drinks while playing pool. For this case, he pled guilty to a reckless driving charge, and was sentenced to two weeks of jail time with work release, a fine, a 90-day license suspension, and six months of unsupervised probation. In 2009, he attended six alcohol education and awareness sessions for alcohol abuse, before the case was adjudicated. (Tr. 31-32, 37-49; Answer; GE 2, 3)

SOR ¶ 1.c: In February 2010, Applicant was arrested and charged with DUI. Applicant stated that this occurred in August 2008, and the case was tried in February 2010. He admits being at a bar and drinking until about 12:30 AM, then driving home before his arrest at 2:15 AM. He claims that he did not feel impaired. He stated that he took a breathalyzer and blew a .12, which is well above the legal limit of .08, but he claimed that the breathalyzer was not properly calibrated. He was eventually convicted of DUI. He appealed the case claiming that the police officer falsified the justification for traffic stop in the arrest report, which called into question the legality of the traffic stop, and that the case was dismissed for this reason on appeal. (Tr. 24-28, 37-55; Answer; GE 2, 3)

SOR ¶ 1.e: In September 2016, Applicant was arrested and charged with disorderly intoxication in a public place. He reported that he went to a social event at a bar with his wife and coworkers. He stated that he knew that he was going to be drinking a lot, so he arranged for a coworker to be their designated driver. He claimed that this was the first time that he let loose since his two DUIs in 2008. Some of his coworkers challenged him to play pool for money. He claimed that his coworkers were adding alcohol to his drinks, and he thought that he had consumed less alcohol than they had given him. He became so intoxicated that he was cutoff by the bar and asked to leave the premises. The designated driver had been unexpectedly drinking, so his coworkers called him a taxi. He testified that he had purchased a new car and did not want to leave it in the bar parking lot. He reported that he felt personally wronged and became enraged at the person who was supposed to drive him home, and at the coworkers who physically tried to get him in the taxi. The police were called, and he was belligerent with the police, which led to his arrest. He plead *nolo contendere*, and paid a fine, but his sentence was suspended. He claimed that he drank less after this incident but did not fully abstain from alcohol. (Tr. 55-61; Answer; GE 2, 3)

SOR ¶ 1.f: In July 2017, Applicant was transported by the police to the hospital for alcohol overdose, alcohol intoxication. He reported that after work, he met with a friend at a bar about two hours away from his home, to drink and shoot pool. He stated that they

intended to get a “little drunk”. He reported that they had planned to walk to a restaurant down the street and spend a few hours there until he was sober enough to drive home. He stated that the bar was busy and service was slow, and because of this poor service he did not want to tip the bar staff. He claimed this led to a confrontation with the bartender and the bouncer, and the police were called. The police concluded that he was so intoxicated that he was a danger to himself and transported him to the hospital. The hospital released him about three hours later, after his Blood Alcohol Content (BAC) improved to .09. He claimed that after this incident, he stopped drinking, going to bars, and playing pool. He asserted that he did this through will power alone and did not seek or receive substance abuse treatment or counseling. (Tr. 61-70, 84-85; Answer; AE E; GE 2, 4, 5)

SOR ¶ 1.g: In May 2021, Applicant was arrested and charged with DUI. When Applicant and his wife separated in 2020, he started playing pool again. He reported that he would have one or two drinks while playing to be social. On the night of this incident, he reported having a few beers over the course of about six hours. He then arranged to meet a woman from a dating app at another bar located about an hour away. He drove to the second bar and arrived at midnight. He consumed at least three additional drinks at this bar in under two hours. He reported feeling intoxicated after leaving the bar at about 2:00 AM. He stayed on the couch of someone he met at the bar, until he believed he was sober enough to drive home. He reported that he left to drive home at about 6:00 AM. He stated that he was driving on a dark country highway at 65 MPH, and a deer jumped out in front of him causing him to crash into a tree. A witness to the accident told police that he was passed out in the car after the crash. The police treated the case as a DUI. Although he requested a blood test, he was given a breathalyzer test. He reported that the breathalyzer showed a BAC of .19. He denied that he was intoxicated when he drove home. He stated that because this was his second DUI, his attorney told him to expect a substantial jail sentence, which would have great consequences in his personal and professional life. He asserted that he had no choice but to take a plea agreement. He pled guilty and received a ten-day jail sentence, and was required to complete four online sessions of a DUI panel, 11 sessions of state mandated substance abuse education classes, 50 hours of community service, and had his driver’s license suspended for six months. (Tr. 71-81, 85; Answer; AE A, B)

Applicant reports that after his last DUI conviction, he decided that he would not drive until the next day after drinking. In the last year, he met his fiancé who does not drink. He reports drinking one or two drinks at the pool hall to take the edge off, but claims that he does not drink often. (Tr. 81)

Applicant’s coworker testified that he has known him for about ten years and that he believed Applicant is a hard worker and is responsible. His lead at work testified that Applicant is a conscientious worker and is reliable. Applicant earned an Employee of the Month award in 2021. It was clear from their testimony that neither witness had many social interactions with Applicant outside of work or think that he has a problem with alcohol. However, it was also evident that neither was aware of the full extent of

Applicant's alcohol use and alcohol-related incidents alleged in the SOR. (Tr. 87-98; AE D)

Applicant had his "regular bar tender" testify. She reported knowing him for about four years and did not believe that he has a problem with alcohol. She claimed that she has never had to stop serving him alcohol. She stated that he exhibits caution when drinking. (Tr. 98-104)

Applicant's fiancé testified. She reported knowing him for about a year. She stated that she lives with him and does not think that he has a problem with alcohol, and that he is responsible. (Tr. 104-107)

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

AG ¶ 21 details the personal conduct security concern:

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.

I have considered the disqualifying conditions for alcohol consumption under AG ¶ 22 and the following is 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.

Applicant was cited or arrested for seven alcohol-related incidents since 2005 including three incidents from September 2016 to May 2021. AG ¶ 22(a) applies.

I have considered the mitigating conditions 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; 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) applies to SOR ¶ 1.a. The remaining alcohol related incidents reflect a recurring pattern of questionable judgment, and unreliable or untrustworthy behavior. I cannot find that this behavior is infrequent or unlikely to recur.

AG ¶ 23(b) does not apply. Despite Applicant's claims that in 2009 he learned about alcohol abuse and how to avoid DUIs and alcohol related incidents, he continued to engage in troubling behavior involving alcohol and including his DUI arrest and subsequent guilty plea in 2021. He claimed to stop drinking on several occasions to avoid further trouble. However, he started drinking again and would be involved in situations where his exercised questionable judgment, which resulted in police involvement. Applicant portrays himself as the victim in most of the incidents alleged. However, his repeated minimization of his responsibility for his own decisions and actions, and attempts to blame others are neither credible nor indicative of actions necessary to overcome his alcohol problems. In every alcohol-related incident, except SOR ¶ 1.a, he admitted drinking, including instances when he intended to get intoxicated, and reported that he had a BAC above the legal limit to drive.

Applicant did not provide sufficient evidence to find that he has taken satisfactory actions to overcome his maladaptive use of alcohol or demonstrated a clear pattern of modified consumption. Despite the alcohol education classes he took after his last DUI, he continues to drink alcohol, and has not sought alcohol counseling or treatment.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances

surrounding this case. I considered his witnesses testimony. I have incorporated my comments under Guideline G in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not mitigated the alcohol consumption 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:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraph 1.b-1.g:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge