



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 23-00677  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Mark D. Lawton, Esq., Department Counsel  
For Applicant: *Pro se*

05/24/2024

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 9, 2022. On June 26, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a statement of reasons alleging security concerns under Guidelines E, J, and G. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on August 17, 2023, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 21, 2023. On December 29, 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 February 6, 2024, and did not respond. The case was assigned to me on May 3, 2024.

The FORM consists of six items. FORM Item 1 contains the pleadings. FORM Items 2 through 6 are the government's evidence in support of the allegations in the SOR. FORM Items 2 through 6 are admitted in evidence.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 2.a-2.d, 2.g, and 3.a. He denied the allegations in SOR ¶¶ 2.e and 2.f. His admissions are incorporated in my findings of fact.

In the FORM, Department Counsel corrected an administrative error in SOR ¶ 1.b by changing "subparagraph 1.b, above" to read "subparagraph 2.a, below." Applicant was notified of the amendment in the FORM and did not object to it.

Applicant is a 38-year-old machinist employed by a defense contractor since May 2013. He attended high school from August 1999 to February 2002. It is not clear from the record whether he received a diploma. He has never married. He has three children, ages 19, 17, and 10. He received a security clearance in December 2013.

SOR ¶ 1.a alleges that Applicant was disciplined by his employer in August 2022 for "calling out" from work eight to ten times without cause. He admitted this allegation in his answer to the SOR. In an interview with a security investigator in January 2023, he attributed his conduct to "low motivation or hitting the snooze button too many times," after he broke up with his girlfriend after with whom he lived for four years. (FORM Item 5- at 7.)

SOR ¶ 1.b, as amended, alleges that Applicant failed to report to his facility security officer that he was arrested in September 2021 for assault and battery on a family member. He admitted this allegation in his answer to the SOR.

SOR ¶ 2.a alleges that Applicant was arrested in September 2021 and charged with assault and battery on a family member. He admitted this allegation in his answer to the SOR. This incident arose from an altercation between Applicant and his girlfriend. Applicant was angry with his girlfriend because she had been driving after drinking with their daughter in the vehicle. The girlfriend accused him of kicking her and urinating on her. Applicant denied urinating on her and claimed that her wet clothing was due to her spilling a drink on herself. Applicant was jailed, released on bond, and served with a protective order. (FORM Item 5 at 7; FORM Item 6 at 1-5)

SOR ¶ 2.b alleges that Applicant was arrested in May 2014 and charged with assault and battery on a family member and unlawful use or injury to telephone lines. He admitted this allegation in his answer to the SOR. Sheriff's Office records reflect that Applicant was intoxicated and assaulted his girlfriend. He grabbed his girlfriend's cellphone and threw it when she threatened to call the police. He was placed on probation and required to attend Alcoholics Anonymous meetings. (FORM Item 5 at 15) The charges were *nolle prosequi*. (FORM Item 5 at 8; FORM Item 6 at 6-10)

SOR ¶ 2.c alleges that Applicant was arrested in January 2014 and charged with public swearing or intoxication. He admitted this allegation in his answer to the SOR. Sheriff's Office records reflect that he was arrested and paid a fine. (FORM Item 5 at 8; FORM Item 6 at 11-13)

SOR ¶ 2.d alleges that Applicant was arrested in May 2012 and charged with public swearing or intoxication. He admitted this allegation in his answer to the SOR. Sheriff's Office records reflect that he was arrested and paid a fine. (FORM Item 5 at 8)

SOR ¶ 2.e alleges that Applicant was arrested in May 2011 and charged with simple assault and battery. The Sheriff's office responded to a domestic incident in a shopping center parking lot. Applicant's girlfriend reported that he had choked her and thrown her to the ground. He was arrested but not prosecuted because his girlfriend declined to testify against him. He denied this allegation in his answer to the SOR. (FORM Item 6 at 17-19)

SOR ¶ 2.f alleges that Applicant was arrested in June 2005 and charged with assault and battery on a family member. Sheriff's Office records reflect that Applicant's girlfriend accused Applicant of assaulting her and pulling the telephone cord out of the wall when she tried to call the sheriff's office. A protective order was issued, but there is no record of prosecution. Applicant denied this allegation in his answer to the SOR. (FORM Item 6 at 26-29)

SOR ¶ 3.a alleges that Applicant's habitual alcohol consumption was involved in his multiple arrests alleged in SOR ¶¶ 2.b through 2.f. He admitted this allegation in his answer to the SOR.

### **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* 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* at 531.

## Analysis

### Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .”

Applicant’s admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . any disruptive, violent, or other inappropriate behavior; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially applicable:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶ 17(c) is not established. While public intoxication and unauthorized absence from work are arguably minor, domestic violence is not. Applicant’s conduct was recent, frequent, and did not occur under circumstances making recurrence unlikely.

AG ¶ 17(d) is not fully established. Applicant acknowledged his behavior in his interviews with a security investigator, but he submitted no evidence of counseling, treatment, or other steps to change his behavior. Based on his track record of heavy drinking and domestic violence, I am not persuaded that his criminal behavior is unlikely to recur.

### **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 admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

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.

Neither mitigating condition is established. Applicant's most recent criminal conduct was in September 2021, only a year before he submitted his SCA in September 2022. He was disciplined for unauthorized absences from work in August 2022, shortly before submitting his SCA. In the context of his many years of alcohol-related criminal conduct, insufficient time has passed to mitigate the concerns raised by his conduct. Other than the six court-ordered AA meetings, he submitted no evidence of counseling or treatment.

## **Guideline G, Alcohol Consumption**

The 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 evidence in the FORM establish the following disqualifying conditions under this guideline:

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.

The following mitigating conditions are potentially applicable:

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.

Neither mitigating condition is established. Applicant’s maladaptive alcohol use was recent, frequent, and did not occur under unusual circumstances. While he acknowledged his alcohol problems during the interview with the security investigator, he has submitted no evidence of treatment or counseling. He continues to consume alcohol, and insufficient time has passed to show an established pattern of modified consumption.

## **Whole-Person Concept**

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. 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 E, J, and G in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines E, J, and G and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his personal conduct, criminal conduct, and alcohol consumption.

### **Formal Findings**

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

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline J (Criminal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a-2.g:	Against Applicant
Paragraph 3, Guideline G (Alcohol Consumption):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge