



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



In the matter of: )  
)  
) ISCR Case No. 22-02539  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: Randall H. Davis, Esq.

06/07/2024

**Decision**

Hyams, Ross D., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 16, 2021. On January 26, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G (alcohol consumption) and J (criminal conduct). Applicant responded to the SOR on February 10, 2023, and requested a hearing before an administrative judge. The case was assigned to me on October 16, 2023.

The hearing was convened as scheduled on January 10, 2024. Department Counsel submitted Government Exhibits (GE) 1-3, which were admitted in evidence without objection. Applicant's Exhibits (AE) A-C were admitted in evidence without objection. At the end of the hearing, I left the record open for two weeks for Applicant to

submit additional documentary evidence. He submitted AE D-F, which were admitted without objection.

### **Findings of Fact**

In his answer, Applicant admitted all SOR allegations with explanation. 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 38 years old. He graduated high school in 2004 and completed trade school in 2019. He married in 2021 and has one minor child and two minor stepchildren. From January 2020 through February 2024, he worked as an airframe and powerplant mechanic for a government contractor. Applicant left his employment with the government contractor about a month after the hearing concluded. (Tr. 15-17; GE 1; AE A, B, C)

Applicant did not report any police involvement, alcohol related issues, or criminal charges or convictions on his August 2021 SCA. Since he obtained his FAA certification in 2020, he has been subject to random testing for drugs and alcohol consumption at work. (Tr. 58-64; GE 1)

The SOR alleges the following under Guideline G (alcohol consumption):

SOR ¶ 1.a alleged in October 2009, Applicant was arrested for driving while impaired (DWI) and was convicted. On the night of the arrest, he attended a social club meeting and claimed to have only consumed three beers over a two-hour period. When pulled over by police, he registered a .09% blood alcohol content on a breathalyzer. He was sentenced to community service and had to pay a fine. His attorney fees were about \$2,500. After his arrest, he had an alcohol assessment done, but does not recall the results. He thinks he was told to abstain from alcohol but does not recall the instructions. He did not have any alcohol counseling or treatment after this arrest. In 2013, he also completed a required DWI risk reduction program for this arrest. (Tr. 28-58; GE 2, 3; AE E)

SOR ¶ 1.b alleged in January 2011, Applicant was arrested for DWI. He was found guilty and sentenced to confinement 12 months – suspended, 18 months of probation, and had to pay court-ordered fines and court costs. He reported that he was out with friends that evening and claimed he drank about six beers over about a three-and-a-half-hour period. He claimed he did not feel impaired. He was stopped by police and failed the field sobriety test. He pled guilty to the offense, spent seven days in jail and the rest of his sentence was suspended. At his required alcohol assessment, he told the evaluator he did not have a drinking problem. He does not recall if he was told to abstain from alcohol or to attend alcohol counseling. He did not have any alcohol counseling or treatment after this arrest. His attorney fees were about \$3,500. He was required to resign from his job with county school system because he had two DUI convictions. He had to

move to another state for work and took a significant pay cut. In 2013, he completed a required DWI risk reduction program for this arrest. (Tr. 28-58; GE 2, 3; AE F)

SOR ¶ 1.c alleged in February 2012, Applicant was arrested for driving under the influence of alcohol (DUI). He pled guilty and was sentenced to 10 days of confinement, 12 months of probation, 240 hours of community service, and had to pay court-ordered fines. This arrest occurred while he was still on probation from the 2011 DWI arrest. He was out fishing with friends and drank about 10 beers. He admits that he did not have a driver's license at that time and was driving while intoxicated. He reported it was raining, he lost control of the vehicle, hit a pole, and flipped his truck. He and his dog were injured, and it took two hours for rescue services to arrive, which he reported was a terrifying experience. Police found empty beer cans in the vehicle. He had a concussion, broken hand, and a head laceration. Since he had no insurance at the time, his hospital bill was about \$25,000. His attorney fees were about \$10,000. (Tr. 28-64; GE 2, 3)

Prior to the 2012 DUI, Applicant reported drinking four or five times a week and to occasionally driving while intoxicated. After the 2012 DUI, he claimed that he abstained from alcohol for about four years. In 2012, he attended Alcoholics Anonymous (AA) meetings daily for a year and identified himself as an alcoholic. In 2013, his attendance slowed down to once or twice a week, and he stopped attending in 2014. In late 2016, Applicant started consuming alcohol again. (Tr. 28-58)

SOR ¶ 1.d alleged in May 2018, Applicant was arrested for DUI. He pled guilty and was sentenced to 72 hours of confinement, 12 months of probation, 240 hours of community service, and court-ordered fines. He was out with friends at a restaurant the night of this arrest. He drank about four beers and drove himself and a friend home. He claimed that he spaced out his drinking, drank water, and was not impaired when he drove home. When stopped by police, he failed the field sobriety test. He refused a breathalyzer because he thought it would be harder to prove he was drinking and driving. He incurred more attorney's fees for this incident. The court also ordered a drug and alcohol assessment after this arrest, and he was required to do a state-mandated alcohol educational course. The record shows that he did not report the full extent of his arrests or alcohol related problems to the evaluator. He did not have any alcohol counseling or treatment after this arrest. (Tr. 29-64; GE 2, 3; AE D)

In 2019, Applicant was cited by police for a car accident. He was arrested and his driver's license was suspended. Criminal charges were dismissed when he was able to show the court that he met his 2018 DUI sentence requirements. This incident was not alleged in the SOR but will be considered in the application of mitigating conditions. (Tr. 29-58)

Applicant reported he reduced his alcohol consumption after his last DUI arrest. He admitted that he still consumes alcohol every few weeks, at home or out at dinner. He has his wife drive him home. When asked about a conflicting statement in his 2023 SOR

Answer that he no longer consumes alcohol, he stated that assertion was a mistake. He claims that he no longer sees alcohol as a way to cope with stress and loss. (Tr. 29-58)

Under Guideline J, SOR ¶ 2.a cross-alleged the Guideline G allegations ¶¶ 1.a-1.d, as criminal conduct concerns.

Witness One oversees safety and security for Applicant's former employer, and he runs the alcohol and drug testing program. He reported that Applicant had not failed any drug or alcohol testing, and he would have reported him if he had failed. He stated that Applicant is a good employe and has a skillset they need. (Tr. 68-82)

Witness Two was Applicant's direct supervisor at his former employer. He had known him about three years. He reported that Applicant's skills improved during this employment. Applicant was trusted, dependable, and volunteered for assignments. Applicant had a good attitude and work ethic. He was unaware of Applicant's DUI's in the hiring process, but it would have been of concern if he knew. He did not recall seeing him consume alcohol during the years they worked together. (Tr. 82-96)

Witness Three was Applicant's wife. She reported that he drinks in moderation a couple of times a month at home, and never drinks and drives. She has no concern about him abusing alcohol or driving while intoxicated in the future. She never saw him drink to excess, but also did not know him before 2019. She did not know he reported himself to be an alcoholic at AA. She has seen him handle stress and loss and not resort to alcohol. (Tr. 96-108)

## **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 ¶ 2I, 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 arrested for four DUIs from 2009 to 2018. 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) does not apply. The repeated DUI arrests reflect a recurring pattern of questionable judgment, and unreliable and untrustworthy behavior. Applicant stated he was an alcoholic while attending AA meetings. His commitment to abstinence quickly waned, and he is drinking again. Although he attended AA meetings, he has not had alcohol or substance abuse counseling. While some of his life circumstances have changed, I cannot find that this behavior is infrequent or unlikely to recur.

AG ¶ 23(b) does not apply. Despite Applicant's period of abstinence, he still has not completely stopped drinking. He did not submit sufficient evidence that he had alcohol or substance abuse treatment or counseling. He thinks he was told to stop drinking as early as 2009, and on more than one occasion. He minimized his alcohol use and related problems with the evaluator in 2011 and 2018, his former employer, and his wife. While he claims he is not using alcohol as a coping mechanism, he reengaged in the same pattern that brought him to alcohol abuse and alcohol-related arrests. I cannot find that he has taken significant actions to overcome this problem.

Applicant has spent close to \$20,000 on legal fees, and more than that on hospital fees. He injured himself and his dog and had a terrifying experience, spent time in jail on multiple occasions, lost his driver's license for multiple periods, and had to resign from his job and move to a new state. Despite this negative history, Applicant has continued drinking. It is difficult to find his claim credible that everything is different now. 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.

### **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.

The guideline notes several conditions that could raise security concerns under AG ¶ 31. The following are potentially applicable in this case:

(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

(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.

SOR ¶ 2.a cross-alleged SOR allegations in ¶¶ 1.a-1.d, which were established under Guideline G. AG ¶¶ 31 (a) and (b) apply.

I have considered the mitigating conditions under AG ¶ 32. The following are potentially applicable:

(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 32(d) do not apply. On four occasions Applicant's criminal behavior resulted in an arrest, time in jail, and conviction. He drove while intoxicated while on parole and without a driver's license. He incurred close to \$20,000 in legal fees and had to pay fines and court fees. While parts of his life have changed since his last arrest, there is insufficient evidence to find these circumstances are unlikely to recur. It continues to cast doubt on his reliability, trustworthiness, and judgment. While Applicant provided some rehabilitative evidence, he attended AA meetings in 2012 and 2013 and later trade school, he did not provide sufficient evidence to find that there has been successful rehabilitation, or mitigation by the passage of time or other factors.

### **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 Guidelines G and J 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 and criminal conduct 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-1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	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.

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Ross D. Hyams  
Administrative Judge