



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



In the matter of: )  
)  
) ISCR Case No. 23-00656  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Christopher Snowden, Esq.

06/26/2024

**Remand Decision**

HARVEY, Mark, Administrative Judge:

Applicant mitigated security concerns arising under Guidelines G (alcohol consumption), J (criminal conduct), and E (personal conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

On November 12, 2022, Applicant completed and signed a Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On May 12, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant. (Hearing Exhibit (HE) 2) This action was taken under Executive Order (Exec. Or.) 12968, *Access to Classified Information*, dated August 2, 1995; DoD Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, effective on April 3, 2017 (DoDM 5200.02); and Security Executive Agent Directive 4 (SEAD 4), establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG)*, effective on June 8, 2017.

The SOR detailed reasons why the DCSA CAS notified Applicant that it intended to deny or revoke his security clearance because it did not find that it is clearly consistent with the interests of national security to grant or continue a security clearance for him.

Specifically, the SOR set forth security concerns arising under Guidelines J and E. (Hearing Exhibit (HE) 2) On May 19, 2023, Applicant responded to the SOR. (HE 3)

On August 24, 2023, DOHA issued a notice of hearing, scheduling the hearing for October 5, 2023. (HE 1) Applicant's hearing was held as scheduled.

During Applicant's first hearing, Department Counsel offered four exhibits, and Applicant did not offer any exhibits. All proffered exhibits were admitted. On October 16, 2023, DOHA received a transcript of Applicant's security clearance hearing. On November 13, 2023, an administrative judge issued her decision in which she concluded Guidelines J and E security concerns were not mitigated, and it was not clearly consistent with the national interest to grant Applicant's security clearance.

On February 22, 2024, the DOHA Appeal Board remanded Applicant's case. ISCR Case No. 23-00656 (App. Bd. Feb. 22, 2024). The Appeal Board concluded:

The errors identified above warrant a remand. Based on our review of the record, we find that the nature of the Judge's questions at hearing, the focus of her decision on non-alleged conduct, and her adverse credibility determination would cause a reasonable person to question the impartiality of the Judge on remand. See USAF-C Case No. 23-00001-R at 7. Given these circumstances, we conclude that the best resolution is to remand this case to a different judge. Under Directive E3.1.35, the Judge assigned the case is required to issue a new clearance decision. The Board retains no jurisdiction over a remanded decision. However, the Judge's decision issued after remand may be appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. (*Id.* at 10)

On March 5, 2024, the case was assigned to me. On March 7, 2024, Applicant moved for a hearing. (HE 6) Department Counsel did not object, and I granted the motion. Applicant objected to consideration of the contents of the transcript of the previous hearing because the Appeal Board decided she was biased against him, and he was not represented by counsel at the prior proceeding. I ruled that the record of the previous hearing was inadmissible; however, Applicant and Department Counsel could read Applicant answers in the transcript to Applicant and cross-examine him about those answers. (Tr. 4-5, 78-80)

In March 2024, Department Counsel submitted an amendment to the SOR and added three allegations under Guideline G, and on March 27, 2024, Applicant responded to the amendment of the SOR. (HE 4) Applicant requested a delay to prepare to address the additional allegations. (HE 6) The hearing was initially scheduled for April 23, 2024. (HE 6) Applicant requested another delay. On April 1, 2024, DOHA issued a Notice scheduling the hearing for May 7, 2024. (HE 5) The hearing was held as scheduled.

At the May 7, 2024 hearing, Department Counsel offered four exhibits, Applicant offered 10 exhibits, and all proffered exhibits were admitted without objection. (Tr. 12-16; Government Exhibits (GE) 1-GE 4; Applicant Exhibits (AE) A-AE J) On May 16, 2024,

DOHA received a transcript of the hearing. Department Counsel provided one post-hearing exhibit, which was admitted without objection. (GE 5) The record was closed on May 22, 2024. (Tr. 91, 110)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e, and 2.a. (HE 3) He denied the allegation in SOR ¶ 2.b. (HE 3) He admitted the allegations in the amendment, SOR ¶¶ 3.a, 3.b, and 3.c, and he provided clarifications and extenuating and mitigating information. (HE 4) Applicant's response included this comment:

My sentencing included probation and alcohol educational courses. To the best of my recollection, the alcohol educational courses lasted approximately six months. I admit that I made mistakes in my youth regarding alcohol use. Since my DUI in 2018, I have resolved to address my alcohol use. I have since entered into counseling and I have abstained from the use of alcohol for the entirety of my treatment. I have also provided a statement of intent to remain abstinent from alcohol as well as tests to corroborate my abstinence. (HE 4)

Applicant is a 42-year-old quality assurance inspector. (GE 1; AE C) He resides with his mother and brother. (Tr. 17) His mother receives care from Applicant and his brother. (Tr. 18) In 2020, Applicant received a certificate or degree from an apprenticeship program relating to manufacturing. (Tr. 18-19; AE I) He is currently enrolled in an aircraft-assembly-related degree program. (Tr. 18) There is no evidence of violations of his employer's rules, being impaired at work, or that Applicant compromised his company's security.

### **Alcohol Consumption, Criminal Conduct, and Personal Conduct**

In about May 2005, Applicant was parked on the side of the road eating lunch, and a police officer decided to search Applicant's car. (Tr. 26) The officer found marijuana and methamphetamine. (Tr. 26) The person who was with him refused to accept responsibility for the drugs. (Tr. 26) Applicant denied that he possessed the methamphetamine; however, he admitted he possessed the marijuana. (Tr. 27) He was charged with possession of methamphetamine and marijuana. (SOR ¶ 1.a response) He said the marijuana charge was dismissed, and the methamphetamine charge was reduced to a misdemeanor. (Tr. 28) He was placed in a diversion program for the charge of possession of a controlled substance and on probation for five years. (SOR ¶ 1.a response)

In about June 2007, Applicant was charged with driving under the influence of alcohol (DUI). (SOR ¶ 1.b response) He was convicted of DUI and placed on probation for five years. (*Id.*) He was ordered to complete a six-month alcohol education program. (Tr. 30) He was not ordered to attend alcohol counseling or treatment program. (Tr. 30)

Around 2007, Applicant was occasionally consuming “probably a whole case of beer, like, a 20-pack of beer and a bottle” of Jack Daniels. (Tr. 37-38; GE 2) He drank alcohol mostly on the weekends. (Tr. 38)

In about May 2008, the police stopped Applicant’s vehicle and found marijuana in his vehicle. (Tr. 32) He was charged with and convicted of possession of marijuana. (Tr. 31-32; SOR ¶ 1.c response) He was sentenced to a fine, which he paid. (Tr. 33) He is aware that currently recreational use of marijuana is not illegal under the state law where he resides. (Tr. 33) He did not use marijuana or any other illegal drug after May 2008. (Tr. 33, 86) He does not associate with marijuana users. (Tr. 34)

In about October 2009, Applicant was arrested for DUI. (Tr. 34; SOR ¶ 1.d response) He was convicted of DUI and placed on probation for five years. (*Id.*) He was ordered to complete an 18-month alcohol-education program. (Tr. 35)

Prior to 2012, Applicant was consuming about five or six beers at a sitting and sometimes more. (Tr. 37) He reduced his alcohol consumption after 2012 because he believed alcohol consumption was adversely affecting his productivity, and he would not be helpful to his mother if she needed him. (Tr. 36, 73-74) From 2012 to 2018, he reduced the frequency of his alcohol consumption to less-than-monthly occasions. (Tr. 39) He received support from family members. (Tr. 39)

In about June 2018, Applicant drank about six beers and then drove his vehicle. (Tr. 40-41) He did not describe the size of the beers or their alcohol content. A police officer stopped Applicant’s vehicle because one of his taillights was out. (Tr. 40; GE 5) He failed a field sobriety test, and he received two breathalyzer tests. (GE 5) His blood alcohol content (BAC) was .16 and .17 percent. (GE 5) He was charged with and convicted of DUI. (Tr. 40; SOR ¶ 1.e response) He was sentenced to jail for 10 days; however, the judge converted it to five days of work release. (Tr. 41) He was ordered to complete an 18-month alcohol-education program, and he was placed on probation for five years. (Tr. 41) He paid an \$1,800 fine. (GE 2 at 5) He completed all court-ordered requirements without problems. (Tr. 42) He attended some Alcoholics Anonymous (AA) meetings. (Tr. 42) He acknowledged that he had a problem with alcohol consumption in 2018 when he had his most recent DUI. (Tr. 82) However, he does not consider himself to be an alcoholic because he does not crave alcohol and does not suffer from withdrawals. (Tr. 77, 81)

After 2018, Applicant occasionally consumed alcohol. (Tr. 42) He usually consumed one or two beers at his residence. (Tr. 42) His goal at that time was to not drink to intoxication. (Tr 43) He has never received a recommendation that he abstain from consumption of alcohol. (Tr. 43) He has not attended alcohol counseling or therapy. (Tr. 71) There is no alcohol in his residence. (Tr. 43) He does not go to bars. (Tr. 49) He does not socialize where alcohol is consumed or associate with people who are consuming alcohol. (Tr 49) Since November 2023, he has attended substance-use-related meetings at his church. (Tr. 43-44; AE A; AE G) He has been abstinent from alcohol consumption since September 2023. (Tr. 45, 59) He has been invited to be an

instructor in the alcohol program at his church, and this program is similar to AA. (Tr. 45, 77; AE G) He intends to continue attendance at the alcohol meetings and to remain abstinent from alcohol consumption. (Tr. 48) He had been seeing a therapist about family issues and alcohol consumption on a weekly basis; however, his most recent appointment was in September 2023. (Tr. 49, 83-84) He said he has not been diagnosed with alcohol use disorder. (Tr. 86)

SOR ¶ 2.a cross alleges the information in SOR ¶¶ 1.a through 1.e under the personal conduct guideline.

SOR ¶ 2.b alleges on April 10, 2023, Applicant provided false information in his response to DOHA interrogatories when he said he last consumed alcohol in June 2018. Applicant disclosed his criminal offenses as indicated in SOR ¶¶ 1.a through 1.e on his November 12, 2022 SCA. (GE 1) On December 29, 2022, an Office of Personnel Management (OPM) investigator interviewed Applicant. (GE 2) Applicant described each of the criminal offenses in SOR ¶¶ 1.a through 1.e in detail. As for his current alcohol consumption, the OPM summary states that he currently drinks one or two beers monthly. (GE 2 at 8) He has reduced the amount and frequency of his alcohol consumption. (*Id.*) He does not intend to excessively consume alcohol in the future. (GE 2 at 9) On April 10, 2023, he certified the accuracy of the OPM summary of interview. (GE 2 at 14) His April 10, 2023 response to DOHA interrogatories states:

Yes [ ] No [x]

Please state the approximate date of your LAST CONSUMPTION; the amount and types(s) of alcoholic beverages consumed on that occasion; and the circumstance (e.g., at a party, at a bar, etc.).

**[Answer] June 2018 about six beers. I was hanging out with a friend on the weekend and decided to have a drink due to my (sic) because I had a birthday during that week.**

For what reason(s) did you stop consuming alcohol?

**[Answer] Personal choice not to drink and my responsibilities are more important.**

Do you intend to consume alcoholic beverages in the future?

Yes [ ] No [X]

Do you currently consume alcohol to the point of intoxication?

Yes [ ] No [X]

What was the approximate date (month/year) of your last intoxication?

**[Answer] June 2018.** (GE 2 at 18–20 (emphasis added))

At his hearing, Applicant said the OPM summary was accurate. (Tr. 52-53) He said his incorrect answers to DOHA interrogatories were because he “had a lot on my plate. It’s very hard for me to focus on multiple things. I am not a person that handles a lot of things to do at one time very well.” (Tr. 54) On April 10, 2021, he had schoolwork and other distractions at the time he was responding to DOHA interrogatories. (Tr. 63) He was focused on his criminal history and not on his “regular daily life. You know, I don’t keep track of everything that I do.” (Tr. 55, 65) He has some “undiagnosed challenges. . . . [T]here’s times where I have to read things over and over and over again because they just don’t make sense to me, okay? . . . . Whether I understood the question or not, it’s an oversight on my part.” (Tr. 66-67)

At the time he responded to the DOHA interrogatories, he was not consuming alcohol, and his answer about current consumption of alcohol is correct even though he was drinking about monthly. (Tr. 66-67) He also made some mistakes about employment, when he first used marijuana, and the effect of alcohol on his personal life on his 2022 SCA. (Tr. 56-58) Some mistakes in his SCA are obvious because some answers are inconsistent with other answers on his SCA. (Tr. 56-58)

SOR ¶¶ 3.a, 3.b, and 3.c cross-allege the information about DUIs alleged in SOR ¶¶ 1.b, 1.d, and 1.e under the alcohol consumption guideline.

On May 3, 2024, Dr. Scott A. Edwards, board-certified psychologist, issued a report regarding Applicant’s mental health, which stated:

In September 2023, after alcohol use was raised as a security concern, he decided to stop drinking alcohol and to prioritize his security clearance and his career. He has now been abstinent from alcohol for eight months. This was evidenced by negative random breathalyzer and PEth tests conducted in March of this year. I suspect at one time [Applicant] met the DSM-5-TR criteria for Alcohol Use Disorder, moderate. He would now be considered to be in full, sustained remission from that condition if he indeed met criteria for it in the past. He never met criteria for any other substance use disorder. [Applicant] appeared to me to be an open and forthright person during this evaluation. I suspect any discrepancies in his reports about his alcohol use are attributable to misremembering or misunderstandings. Regardless, he does not drink anymore. Instead, he seemed focused on his goals to complete his education and advance his career. He has many close relationships with family members and friends. He does not associate with people who use drugs or drink too much alcohol. He is engaged in counseling for his own self-development and he is involved in a church-based alcohol treatment program wherein he been trained as a counselor in the program.

**CONCLUSION:** Based on all the available data, [Applicant] no longer has any condition that could negatively impact his reliability, trustworthiness, or

judgment while working in a cleared setting or around classified information. The risk of relapse into excessive alcohol use is thought to be very low. (AE I)

On March 8, 2024, Applicant said:

I am submitting this statement as intent to never operate a motor vehicle while under the influence of alcohol.

Should I choose to consume alcohol in the future, I will do so in a responsible manner, and I will not operate a motor vehicle after I have consumed alcohol to the point of intoxication.

I understand that any future involvement with drinking and driving is grounds for immediate removal from my position within the Agency. (AE F)

On May 6, 2024, Applicant said:

I am submitting this statement of intent to declare that I will continue to abstain from alcoholic beverages.

I will continue not to consume alcohol in the future, and I understand that any future involvement with drinking is grounds for revocation of my national security eligibility. (AE J)

[The body of the May 6, 2024 statement of intent to abstain from alcohol consumption says it was executed on "May 6, 2023"; however, it was notarized on May 6, 2024. (AE J) I concluded this statement of intent to abstain from alcohol consumption was effective on May 6, 2024.]

## **Character Evidence**

Applicant provided five character letters from coworkers, which indicate he is an excellent employee. (AE C) The general sense of Applicant's character evidence is that he is professional, diligent, responsible, reliable, and conscientious. The character evidence supports approval of his access to classified information.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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 Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant’s security eligibility. Direct or objective evidence of nexus is not required.” ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).



## Analysis

### Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern is as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. . . .

AG ¶ 16 provides four personal conduct disqualifying conditions that are relevant in this case as follows:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; and

(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: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶ 2.a cross alleges the allegations of criminal conduct alleged in SOR ¶¶ 1.a through 1.e. AG ¶¶ 16(c) and 16(e) apply to SOR ¶ 2.a. AG ¶ 17 provides one personal conduct mitigating condition which applies to SOR ¶ 2.a. AG ¶ 17(c) states, "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.”

As indicated under the criminal conduct and alcohol consumption guidelines, *infra*, this conduct is not recent (Applicant's most recent criminal offense was a DUI in June 2018) and is unlikely to recur because Applicant has maintained his sobriety since September 2023. SOR ¶ 2.a is mitigated for the reasons stated under the criminal conduct and alcohol consumption guidelines, *infra*.

SOR ¶ 2.b alleges Applicant falsely stated in his April 10, 2023 responses to DOHA interrogatories that he last consumed alcohol in June 2018, which was the month of his most recent DUI offense.

The DOHA Appeal Board has stated, “Applicant's statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they [are] not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

Applicant said he gave the false answers in his April 10, 2023 response to DOHA interrogatories about his most recent consumption of alcohol being in June 2018 because he was focused on his June 2018 DUI offense; he was rushed when he completed his responses; and he did not intend to mislead DOHA. Applicant described each of the criminal offenses in SOR ¶¶ 1.a through 1.e in detail in his SCA and during his OPM interview. He clearly was not attempting to hide or conceal his poor judgment or bad behavior. As to his current alcohol consumption, the OPM summary states that he currently drinks one or two beers monthly. On April 10, 2023, he certified the accuracy of his OPM summary of interview. Applicant said he had difficulty discerning the meaning of written information, which may have contributed to his inconsistent answers concerning the currency and recency of his alcohol consumption on April 10, 2023. It is reasonable that he was focused on the June 2018 DUI offense rather than on his current alcohol consumption because that is his the only criminal offense after November 2009. Moreover, an applicant may not appreciate the significance and necessity of careful and accurate answers to questions about levels and timeliness of alcohol consumption.

I accept as credible that Applicant's explanations for his incorrect responses to DOHA interrogatories were unintentional mistakes, and that they were not made with intent to deceive. He has refuted the falsification allegation in SOR ¶ 2.b.

## **Criminal Conduct and Alcohol Consumption**

AG ¶ 21 articulates the Government's concern about 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 ¶ 30 describes the security concern about 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."

AG ¶ 22 lists alcohol consumption conditions that could raise a security concern and may be disqualifying in this case including:

- (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; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶ 31 describes alcohol consumption conditions that could raise a security concern and may be disqualifying 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;
- (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; and
- (d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

AG ¶¶ 22(a), 31(a), and 31(b) are established. Discussion of the disqualifying conditions in SOR ¶¶ 22(a), 31(a), and 31(b) is in the mitigating section *infra*.

The evidence of record also establishes AG ¶ 22(c) because Applicant drank a case of beer and a bottle of Jack Daniels at a sitting around 2007, and his BAC after his 2018 DUI arrest was .16 or .17 percent. There is some evidence of the applicability of AG ¶ 22(d) because Dr. Edwards' medical report said, "I suspect at one time [Applicant] met the DSM-5-TR criteria for Alcohol Use Disorder, moderate." (AE I) AG ¶ 31(d) is established because Applicant committed criminal offenses while on probation. The five-year probation orders after the June 2007 DUI are not part of the record, and so there is no evidence he violated any alcohol consumption restrictions when he was arrested in October 2009 for DUI. AG ¶ 22(g) is not established because the probation orders are not part of the record, and there is no evidence the probation order restricted his alcohol consumption.

AG ¶¶ 22(c), 22(d), and 31(d) will not be considered for disqualification purposes because they were not alleged in the SOR. However, the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered, stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These non-SOR allegations will not be considered except for the five purposes listed above.

AG ¶ 23 details conditions that could mitigate the alcohol consumption security concerns including:

- (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.

AG ¶ 32 lists conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

In about June 2007, October 2009, and June 2018, Applicant was arrested for DUIs. He was subsequently charged with and convicted of three DUIs. In 2005, he was arrested for possession of marijuana and methamphetamine. In 2008, he was arrested for possession of marijuana. He admitted the possessions of marijuana in 2005 and 2008. He said he was placed into a diversion program for the methamphetamine offense. He admitted that he committed five criminal offenses (three DUIs and two possessions of marijuana).

All of Applicant's criminal offenses are connected to abuse of alcohol or possession of illegal drugs. The drug offenses are not recent because the most recent offense occurring in May 2008, 16 years ago. If Applicant can refrain from drinking alcohol to intoxication, there is no reason to believe he will engage in future criminal conduct.

Applicant said he was not ordered to and did not attend an alcohol counseling or treatment program. He attended two alcohol education programs. He is credited with successful completion of the probation after his most recent criminal offense in 2018 and all other court-ordered requirements. He attended some AA meetings. He acknowledged that he had a problem with alcohol consumption in 2018 when he had his most recent

DUI. However, he does not consider himself to be an alcoholic because he does not crave alcohol and does not suffer from withdrawals.

After 2018, Applicant occasionally consumed moderate amounts of alcohol. He has never received a recommendation that he abstain from consumption of alcohol. There is no alcohol in his residence. He does not go to bars. He does not socialize or associate with people who are consuming alcohol. Since November 2023, he has attended substance-use-related meetings at his church. He has been invited to be an instructor in the alcohol program at his church. He has been abstinent from alcohol consumption since September 2023. He intends to continue attendance at the alcohol meetings and to remain abstinent from alcohol consumption. He saw a therapist about family issues and alcohol consumption; however, his most recent appointment was in September 2023.

Applicant's alcohol use disorder by history is in sustained remission. Based on Applicant's sincere and credible statements about his responsible alcohol consumption since June 2018; his more recent abstention from alcohol consumption since September 2023; and his promise not to consume alcohol in the future, similar alcohol-related incidents such as a DUI are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or judgment. Applicant took reasonable and responsible actions to mitigate alcohol consumption security concerns. He has an excellent employment record. AG ¶¶ 23(a), 23(b), 32(a), and 32(d) are established. Guidelines G and J security concerns are mitigated.

### **Whole-Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. A careful weighing of several variables in considering the whole-person concept is required, including the totality of his or her acts, omissions, and motivations. Each case is decided on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines G, J, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 42-year-old quality assurance inspector. In 2020, he received a certificate or degree from an apprenticeship program relating to manufacturing. He is currently enrolled in an aircraft-assembly-related degree program. He provided five character letters from coworkers, which indicate he is an excellent employee. He is professional, diligent, responsible, reliable, and conscientious. There is no evidence of violations of his employer's rules or that Applicant compromised security. See ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (noting admissibility of "good security record," and commenting that security concerns may nevertheless not be mitigated).

In about June 2007, October 2009, and June 2018, Applicant was arrested for DUIs. He was subsequently charged with and convicted of three DUIs. He admitted he possessed marijuana in 2005 and May 2008. His BAC for his most recent DUI was .16 or .17 percent. He violated probation when he committed additional criminal offenses. Applicant's alcohol-related criminal offenses raised serious security concerns.

Applicant received alcohol education. After June 2018, he consumed alcohol responsibly, and no additional criminal offenses occurred. He promised not to drink alcohol in the future. I am confident he will comply with laws, rules, and regulations. His alcohol-related arrests happened under such unusual circumstances that they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or judgment.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated alcohol consumption, criminal conduct, and personal 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 J: Subparagraphs 1.a through 1.e:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a and 2.b:	FOR APPLICANT For Applicant
Paragraph 3, Guideline G: Subparagraphs 3.a, 3.b, and 3.c:	FOR APPLICANT For Applicant

## **Conclusion**

Considering all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge