



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01924
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel O’Reilly, Esq., Department Counsel  
For Applicant: Ilona Shparaga, Esq.

07/31/2024

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**Decision**

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OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

On January 27, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G and Guideline J. The DOD issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017. Applicant responded to the SOR on June 7, 2023 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2024.

The hearing convened as scheduled on May 30, 2024. Government Exhibits (GX) 1 through 7 and Applicant Exhibits (AX) A through O were admitted into evidence without objection. Applicant and one witness testified. The record closed at the conclusion of the hearing and DOHA received the hearing transcript (Tr.) on June 6, 2024.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted allegations ¶¶ 1.a, 1.b, 1.d, 1.e and 1.f. He admitted in part allegation ¶ 2.a and denied allegations ¶¶ 1.c and 2.b with explanations. His admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 44 years old. He is married and has no children. He completed a bachelor's degree in 2006 and began working as a systems administrator with a DOD contractor shortly afterwards. He received his first security clearance with the start of this employment and has maintained a security clearance throughout his career. (Answer; GX 1-3; AX 4; Tr. 44-51)

Since 2006, Applicant has been consistently employed with various DOD contractors, primarily as a systems engineer or project manager. His work has always focused on a single DOD technical system. He has been with his sponsoring employer since November 2022 as a project manager. (Answer; GX 1-3; AX 4; Tr. 51-69)

In 2003, Applicant was arrested and charged with domestic violence (SOR ¶ 1.f). He testified that he was about 18 years old at the time when an ex-girlfriend asked him to meet for dinner. He agreed and, at the end of the evening, he drove her home and she refused to leave his vehicle. He then left the vehicle and walked away. When he returned later, she was gone and he drove away. She later filed charges stating that he shoved and pulled her out of the vehicle which caused bruising. He stated that alcohol was not involved in this event. (Answer; GX 2-3; Tr. 117-119)

Applicant recalled receiving a summons and, several months later, appearing in front of a judge where he denied the charges. He was found guilty of harassment and a restraining order was issued against him. He never violated the restraining order and no longer has any contact with the ex-girlfriend. He disclosed this event in his November 2007 security clearance application (SCA). (Answer; GX 2-3; Tr. 218-220)

In October 2004, Applicant received a citation for an open container of alcohol (SOR ¶¶ 1.e, 2.a). Applicant admitted this allegation and described being outside of his home when an argument started between one of his friends and a neighbor. When the police arrived, Applicant was on the street with an alcoholic beverage and received the citation. He paid the fine and the matter was resolved. (Answer; GX 3; Tr. 113-115)

In December 2008, Applicant was arrested and charged with driving while under the influence of alcohol (DUI) in State A (SOR ¶¶ 1.d, 2.a). Applicant admitted this allegation and stated that, at the time, he had been working long shifts, was experiencing a toxic work environment, and was exhausted. He described consuming alcohol at a brunch with friends before returning home to rest. He later drove to another friend's house and was pulled over for speeding. He underwent a field sobriety test and a breathalyzer test, but could not recall his blood alcohol content (BAC). Shortly after he was arrested for DUI, he reported the event to his facility security officer (FSO). He received probation before judgment and was required to take DUI educational courses as well as participate in community service. He timely completed all of his court-ordered obligations. (Answer; GX 3, 6; Tr. 113-115, 194-199)

SOR ¶ 1.c alleges that Applicant was arrested and charged with contempt of court in June 2009. While a State A record of criminal history reflects this information, Applicant stated that he was never arrested and that this event involved an erroneous warrant that was issued by the court relating to his December 2008 DUI charge. He stated that the DUI charge transferred jurisdictions and he believed that the initial court erred by not removing a scheduled hearing. He testified that his counsel at the time communicated with the courts and the charge was nullified. (Answer; GX 3, 6; Tr. 110-113)

In 2010, Applicant continued to be subjected to a hostile work environment in State A and began experiencing family stressors as his parents divorced. He described being in a "dark place" during this period and, in about September 2010, he attempted to commit suicide by consuming alcohol and pills. (Tr. 212) He was hospitalized for about three days before being discharged. Subsequently, he voluntarily received outpatient treatment with a clinical psychologist from about October 2010 through December 2010. He disclosed his December 2008 DUI arrest and other stressors to the psychologist and was diagnosed with dysthymia and alcohol abuse (SOR ¶ 2.b) as well as a thyroid condition. He was prescribed Wellbutrin for depression. Applicant testified that he was treated for depression and anxiety during this period and denied being treated for alcohol abuse. However, he recalled the psychologist encouraging him to reduce his alcohol consumption and to be mindful of the potential interactions it could have with his medication. (Answer; GX 1, 3, 7; Tr. 120-125, 206-212, 230-233)

In December 2010, Applicant moved to State B and changed to a new employer while continuing to work on the same underlying DOD technical system. He described this move as extremely beneficial to his mental health as the work atmosphere greatly improved. He discontinued any mental health treatment or medication, but did continue to consume alcohol. (GX 1; AX 4; Tr. 49-52, 230-235)

In February 2015, Applicant chose to drive after consuming alcohol at a bar with friends. He was pulled over for speeding. During the stop, he admitted to drinking alcohol and underwent a field sobriety test. Based on advice received from his previous counsel relating to his 2008 DUI, he refused to undergo a breathalyzer test. He was arrested and charged with felony and misdemeanor DUI offenses (SOR ¶¶ 1.b, 2.a). He timely reported

the event to his FSO. While charges were pending, he obtained counsel, voluntarily enrolled in alcohol education courses and had an ignition interlock system placed in his vehicle. He received two years of probation before judgment on the lesser of the DUI charges. The probation was later changed to unsupervised. He remained sober during his two years of probation while subject to alcohol and drug testing and completed all of his court-ordered obligations. (Answer; GX 1, 3-4; AX J; Tr. 109-112; 168-180)

In December 2015, during a background interview with a DOD investigator, Applicant provided details of his past DUIs and described learning self-control. He stated his intent was to never drink and drive again and to always use a designated driver. (GX 3)

Nonetheless, in July 2018, Applicant consumed alcohol at a work-related social event. Afterwards, while driving home, he was pulled over for allegedly driving at 100 mph in a 65 mph zone. During the stop, he admitted to consuming alcohol and underwent a field sobriety test. He again refused a breathalyzer test and was charged with DUI (SOR ¶¶ 1.a, 2.a). He reported this event to his FSO. On the advice of counsel and prior to the adjudication of his charges, he had an interlock system placed in his vehicle and participated in a twelve-week outpatient treatment program. (Answer; GX 1, 3, 5; AX J-L; Tr.87-91, 135-138)

In November 2018, Applicant submitted to an agreed statement of facts and was found guilty of a misdemeanor DUI and traffic offenses. He was sentenced to 90 days of home arrest and two years of supervised probation. He estimated that, during this time, he stopped drinking alcohol and attended about 40 to 50 Alcoholics Anonymous (AA) meetings. Based on his positive actions, his probation was later changed so that his second year was unsupervised. With an early release, his probation was completed in June 2020. An alcohol restriction was also placed on his license, which was lifted in November 2022. (Answer; GX 1, 3-5, 7; AX J-L; Tr. 94-100, 139-145)

Following completion of the outpatient program, Applicant began psychotherapy. From April 2019 through mid-2020, this treatment focused on anxiety and depression management as well as “exploration of his history of alcohol use.” (AX L) He described this treatment as instrumental in changing his life and learned behavioral health exercises to better address his underlying stressors of anxiety and depression. However, with the COVID pandemic, Applicant attended a few telehealth sessions before terminating treatment. (Answer; GX 1, 3; AX L; Tr. 100-105)

In about the fall of 2020, Applicant resumed consuming alcohol. However, he significantly reduced his consumption to one or two drinks at a time. He married in November 2020 and described beneficial changes in his social and work environments. He stopped going out with friends to drink, instead choosing to have friends come over to watch a game. His work commitments became more predictable and less stressful. He described “moving to a different phase” of his life and being in a better place “emotionally, mentally, and spiritually.” (Tr. 126, 155) His wife and friends are aware of his past DUIs

and he described having a support system in place to assist in managing his life stressors. (Tr. 125-155, 253-256)

In May 2023, on his own accord, Applicant underwent an alcohol abuse assessment with a licensed alcohol and drug counselor. Based on statements from the Applicant as well as assessments under the Addiction Severity Index (ASI) and the American Society of Addiction Medicine (ASAM) Patient Placement Criteria (PPC)-2R, the counselor opined that Applicant did not show any indicators of addiction or dependency and that alcohol or drug counseling was not necessary. (AX O)

In February 2024, Applicant renewed his treatment for generalized anxiety disorder and depression through his primary care provider (PCP). He described the mental health medications as assisting in “regular life maintenance” and he was considering additional counseling to further manage his symptoms of anxiety and depression. (Tr. 230-245)

Applicant’s work colleague, Mr. P, testified on behalf of Applicant. He described initially working with Applicant in 2015, but becoming professional and personal friends in 2016. Mr. P stated he was unaware of Applicant’s 2015 DUI arrest, but was familiar with his 2018 DUI arrest. Mr. P described the 2018 arrest as having a significant impact on Applicant. Following the arrest, Applicant began going out after work less, staying home more and reducing his alcohol consumption. Mr. P described that they both had matured over the years as Mr. P was now engaged to be married and Applicant was married. He described Applicant as a “reliable, responsible and respected” person who worked in a supervisory role and was highly trusted in the workplace. (Tr. 20-39)

Applicant submitted several character reference letters from individuals who have worked with him over the last decade. They described Applicant as a “most trusted colleague” who was candid about his past conduct and exhibited “no pattern of reckless behavior.” (Answer) One reference specifically noted that Applicant was mindful of his own mental health while mentoring those around him. (Answer; AX E-I)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 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, these guidelines are applied 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(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

## **Analysis**

### **Guideline G: Alcohol Consumption and Guideline J: Criminal Conduct**

AG ¶ 21 articulates the Government's security 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 ¶ 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; and

(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.

AG ¶ 30 articulates the Government's 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 ¶ 31 lists criminal conduct conditions that could raise a security concern and may be disqualifying in this case including:

(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.

Applicant's admissions and the evidence reflect that he was arrested on three separate occasions for DUI offenses in 2008, 2015 and 2018. With regard to the last offense, he was also charged with traveling at 100 mph in a 65 mph zone. His suicide attempt in 2010 involved alcohol and, while his subsequent treatment focused on depression and anxiety, he was also diagnosed with alcohol abuse.

Applicant also admits, and the evidence supports, that he was charged with a domestic violence offense in 2003 and received an open container citation in 2004. He denies that he was arrested and charged with contempt of court in 2009. However, the Government's evidence is sufficient to establish this security concern. The disqualifying conditions under AG ¶ 22 are established for SOR ¶¶ 2.a and 2.b. The disqualifying conditions under AG ¶ 31 are established for SOR ¶¶ 1.a through 1.f.

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 details conditions that could mitigate the criminal conduct security concerns including:

(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.

The central issue to consider in mitigation is whether Applicant presented sufficient evidence to mitigate and overcome the security concerns raised by his alcohol consumption that led to a diagnosis of alcohol abuse and three DUI offenses. Applicant first experienced a DUI arrest in State A in 2008 during a period of high stress and turbulence in his personal and professional life. Two years later, he used alcohol as part of his suicide attempt. As part of his subsequent therapy, he was diagnosed with alcohol abuse.



However, he then moved to State B where his circumstances significantly improved. He chose to stop receiving mental health treatment and appeared to maintain control over his alcohol consumption. Still, his second DUI, in 2015, was not a consequence of high stress or a toxic work environment. It occurred after he had drinks with friends at a bar. As a condition of his probation, he maintained sobriety for over two years. In December 2015, he told a DOD investigator that he had learned self-control and was never going to drink and drive again. Yet, less than three years later, in 2018, he was arrested again for DUI.

Applicant fully acknowledged the errors in judgement he made surrounding the DUI arrests. After the 2018 arrest, he committed to making serious changes to his lifestyle and alcohol consumption. In the years that followed, he took alcohol classes, completed an alcohol treatment program, attended therapy, addressed his mental health concerns and made changes to his social situation. He committed to not going out and drinking and considerably reduced his overall alcohol consumption. He is now married and described maturing and moving to a different phase of his life.

Although Applicant was diagnosed with alcohol abuse in 2010, he was never advised to abstain from alcohol and his treatment has focused on anxiety and depression. In May 2023, a licensed alcohol and drug counselor opined that Applicant did not show any indicators of addiction or dependency. Recently, he maintained his mental health treatment through his PCP and was considering additional counseling. He has been candid at home and at work about his past and has a strong support system around him.

In the six years since his last DUI, Applicant has established that his history of DUIs is unlikely to recur and no longer casts doubt on his current reliability, trustworthiness or judgment. He has acknowledged his pattern of maladaptive alcohol use and, following treatment he received after the 2018 DUI, evidenced actions he took to modify his consumption and the circumstances around that consumption. AG ¶¶ 23(a), (b) and (d) are applicable to SOR ¶¶ 2.a and 2.b. Since his last two DUIs occurred after he received treatment in 2010, AG ¶ 23(c) is only partially applicable to SOR ¶¶ 2.a and 2.b.

Applicant's circumstances with regard to his alcohol consumption are also relevant in assessing the likelihood that his related criminal conduct, the DUIs, would recur. I find that his completion of his probationary obligations, the passage of time, and his evidenced change in circumstances over the last six years are sufficient to establish that his DUI criminal conduct is unlikely to recur.

Additionally, Applicant's 2003 charge of domestic violence occurred over twenty years ago and he no longer associates with the ex-girlfriend who was involved in the incident. Alcohol was not involved in the incident. Further, he is now married and has not experienced any similar domestic incidents. He has established that this event occurred under unusual circumstances and, even when taken in consideration with his DUIs, does not establish a pattern of criminal conduct.

Applicant also denies being arrested in 2009 on the charge of contempt of court. Although a State A criminal record summary reflects the arrest, I find Applicant's explanation that the charge related to a procedural error between two criminal courts to be credible. This matter was resolved by his counsel at the time. AG ¶¶ 32(a) and (d) are applicable to SOR ¶¶ 1.a through 1.f.

### **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 have incorporated my comments under Guideline G and Guideline J in my whole-person analysis.

Applicant provided a detailed and introspective analysis of his past difficulties with alcohol and acknowledged his pattern of maladaptive alcohol use that led to his three DUIs. In the six years that have since past, he has made substantive changes to how he handles stressors and significantly reduced his alcohol consumption.

I also had the opportunity to observe Applicant's demeanor during his hearing and found that he was credible and candid. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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 J: FOR APPLICANT

Subparagraphs 1.a-1.f: For Applicant

Paragraph 2, Guideline G: FOR APPLICANT

Subparagraph 2.a-2.b: For Applicant

### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Bryan J. Olmos  
Administrative Judge