



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00566
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny G. Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

08/28/2024

**Decision**

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline G (Alcohol Consumption). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on August 1, 2018. On April 27, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline G. The DoD acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered (Answer) the SOR on May 3, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 4, 2023, and the case was assigned to me on January 3, 2024. On January 29, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for March 14, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant offered Applicant Exhibits (AE) A and B and testified. AE A and AE B were admitted in evidence without objection. I kept the record open until April 4, 2024. No additional evidence was received. DOHA received the transcript (Tr.) on March 29, 2024.

### **Findings of Fact**

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since 2014. There is no evidence of any alcohol-related incidents away from work or at work. He served in the U.S. Navy from June 1987 to August 1992 and received a General Discharge. He held a security clearance while in the Navy. He graduated high school in 1987 and received a vocational certification for computer systems (IT) in 1996. He has five adult children from his first marriage. He remarried in 2021 and has a stepchild. (GE 1; Tr. 18-19.)

Applicant admitted SOR ¶¶ 1.a-1.b, that he began heavily misusing alcohol in about 2020, consuming approximately six to eight drinks per day, including a half gallon of whiskey every four days, and that he was diagnosed in 2020 with Alcohol Use Disorder – Severe after voluntarily admitting himself into an inpatient detoxification program (detox). (Answer; Tr. at 31.) His discharge paperwork from detox indicated the objective was to maintain abstinence (Tr. at 32.)

He denied SOR ¶ 1.c, which alleged he began to voluntarily attend a detoxification and outpatient program, in which he attended three meetings per week and received monthly medication (vivitrol) to assist with cravings and failed to follow treatment recommendations to attend Alcoholic Anonymous (AA); continue receiving monthly vivitrol injections; and abstain from consuming alcohol. He stated his drinking got so bad in August 2020 that he voluntarily checked himself into detox. (Tr. at 27.) After being released from inpatient detox he attended multiple AA meetings but none after the required outpatient program. He continued to receive monthly vivitrol injections after his required outpatient program in late 2021. He stopped the injections when his prescriber left the practice. (Tr. 35, 40, 42.) His medical records reflect he returned for a follow-up. He had other medical issues, which now limit his alcohol intake. (Tr. at 39, 48; GE 2 at 43; GE 4 at 148.) Applicant's wife testified she had attended some of his treatment meetings and was the person who took him into detox. (Tr. at 72.) He explained he stopped attending AA meetings because he could not find a group he could relate to. He had informed the program that he would not stop drinking and was seeking to "maintain a healthy relationship with alcohol." (Tr. at 49, 73.)

SOR ¶¶ 1.d-1.e. Applicant admitted SOR ¶ 1.d, that in December 2022 he was evaluated by a licensed psychologist and diagnosed with Alcohol Use Disorder, Moderate, in sustained remission, with prognosis of guarded due to his ongoing use of alcohol. (GE 3 at 6; Tr. at 42, 46.) He admitted SOR ¶ 1.e, that alleged in 2021 he consumed upwards of three to four shots of whiskey each time, four to five times per week and in about 2022 he was consuming about two to three mixed drinks per week with 1.5

to 2 shots per drink. (Tr. at 42.) He admitted the allegation but explained he may consume a beer or two when out at dinner, but his alcohol consumption is done primarily at home, not in public. (Answer.)

He denied SOR ¶ 1.f, that he continued to consume alcohol, not in accordance with his treatment advice and recommendations. He explained that he was in compliance with the treatment advice and recommendations of his doctor. (Answer; Tr. at 42.) He started seeing Doctor [C] in mid-2023. (Tr. at 44; AE B.) Doctor [C] noted as part of the treatment program Applicant submitted to a regular breathalyzer testing program, which were voluntarily submitted. The tests were initially daily and then focused on the weekends when he drank. His appointments with Doctor [C], which last about 30 minutes cover his breath tests and any online classes he had taken. (AE B; Tr. at 57-62.) Doctor [C] prescribed naltrexone. He is currently taking naltrexone. He is being monitored by his primary care physician Doctor [H] because she agrees that naltrexone is an effective treatment for binge drinking. (AE A at 6; Tr at 48, 52, 59-62.)

Applicant suffered a transient ischemic attack (TIA), also known as a mini stroke, in early February 2024. His doctor advised him to discontinue alcohol use because he risked suffering a full stroke if he continued to consume alcohol. (Tr. at 68-69; AE A.) He noted “at this point I have no choice but to stop drinking.” (Tr. at 52.) His wife testified he had not consumed alcohol since the TIA. (Tr. at 68, 75; AE A.) He realizes the seriousness of continuing to drink and the consequences if he returns to drinking. I found him to be credible.

Applicant’s wife took him to detox and was involved in his treatment program. She observed his drinking habits. She described how by 2023 he recognized changes would pull back if he starts to drink more. (Tr. at 79, 80.) She testified how he researched naltrexone and discussed with his doctor if the medication would help him. (Tr. at 81.) She explained that prior to the TIA when they went out, they would use Uber or one of them would be a designated driver. (Tr. at 74.) She testified since the TIA he had followed the doctor’s advice and had not consumed any alcohol. (Tr. at 75.)

### **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*, 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 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*, 484 U.S. at 531.

## **Analysis**

### **Guideline G, Alcohol Consumption**

The security concern for alcohol consumption 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 regarding his alcohol consumption and actions inconsistent with his treatment recommendations raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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;
- (e) the failure to follow treatment advice once diagnosed; and
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Conditions that could mitigate alcohol consumption security concerns are provided 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;
- (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; 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.

Applicant realized that his alcohol consumption was a problem, and he voluntarily admitted himself into detox. He completed the program. He did not abstain from alcohol and sought to develop a healthy relationship with alcohol. His wife supported him and worked with him to maintain that relationship. He modified his alcohol consumption and his diagnosis improved. After Applicant suffered the TIA, he understood he had no choice but to stop drinking and has abstained from alcohol since. Given his family support system, his modification of his alcohol consumption, the improved diagnosis by the government's psychologist, the life altering TIA and subsequent abstinence from alcohol, Applicant realizes the consequences if he returns to drinking. He is committed to sobriety. I find that Applicant established a pattern of abstinence and that his past alcohol

consumption no longer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 23(a) and 23(d) are partially applicable. AG ¶ 23(b) is applicable.

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and that there were no alcohol-related incidents away from work or at work. I have incorporated my comments under Guideline G in my whole-person analysis.

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 security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

## **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Charles C. Hale  
Administrative Judge