DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 23-00528
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

09/12/2024

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Decision

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FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 8, 2022. On March 20, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and J. The DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on March 29, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 26, 2024, and the case was assigned to me on July 9, 2024. On July 12, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on August 6, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on August 20, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 64-year-old project lead for a defense contractor involved with cruise missiles. He was hired in December 2023 but was placed on leave without pay, pending a decision on his security clearance. (Tr. 16-17).

Applicant enlisted in the U.S. Navy in June 1984, when he was 24 years old. He served on active duty until September 2004, and he retired as a chief petty officer (pay grade E-7). He received a security clearance in December 2003. He has worked for federal contractors since February 2014.

Applicant married in August 1981, divorced in March 1992, married in September 2005, and divorced in April 2021. He has three adult children.

Applicant started consuming alcohol when he was 15 years old, drinking one or two beers a year until he was about 20 years old. From ages 21 to 25, he occasionally drank five or six beers in one sitting. He then stopped drinking for five years. At age 30, he began drinking beer three or four times a week. (Tr. 18-19)

In July 1991, while Applicant was on active duty in the U.S. Navy, he was cited for drunk driving and received nonjudicial punishment for violation of Article 111, Uniform Code of Military Justice. This incident occurred while he was stationed overseas and driving a military vehicle. He testified that the culture in his Navy unit at that time encouraged heavy drinking while on duty and off duty. (Tr. 20) He was hit by a dump trunk and ran into a pile of sand. His punishment was restriction to the Naval station for 30 days, 15 days of extra duty, forfeiture of $150 pay per month for two months, and reduction from petty officer second class to petty officer third class. The reduction was suspended for six months. (GX 9; GX 10) He was ordered to attend a one-week counseling program. (GX 4 at 14)

During an interview with a security investigator in March 2022, Applicant volunteered information that he admitted himself for counseling in February 2001. (GX 4

at 14) There is no evidence in the record of the nature or duration of the counseling or any diagnosis from the counselor.

Applicant testified that in 2003, he recognized that he had a problem with his alcohol consumption. He and his second wife had decided to separate, and he realized that he was spending large sums of money on beer. He contacted an outpatient counseling service offered by the Navy, and he reduced his drinking to one or two drinks every few weekends at social gatherings. (Tr. 27-30)

In January 2014, Applicant moved to another location. He had no family or friends at his new location, and he started drinking again at a bar operated by a veterans' organization. (Tr. 31) He was unable to work in his specialty because of a reduction in force. In May 2014, he was arrested and charged with driving while intoxicated, first offense, with a blood-alcohol content of .15-.20%. He estimated that he had consumed six to eight beers and two shots of hard liquor. (Tr. 33) He was convicted of reckless driving, fined, and ordered to attend 12 weeks of alcohol-education classes. (GX 4 at 12; GX 7) He was diagnosed with an alcohol abuse disorder. (Tr. 36) He was ordered to attend Alcoholic Anonymous (AA) meetings. He completed all the court-ordered requirements. (Tr. 36-37) He testified that he stopped drinking for about a year and a half. When he resumed drinking, it was limited to one or two drinks. (Tr. 40)

Applicant moved again in February 2015. He drank moderately until 2018, when he increased his drinking to three to six beers every other day. (Tr. 44) In November 2020, Applicant was arrested and charged with attempting to drive a vehicle while impaired by alcohol. He had consumed eight to ten beers at a music festival and two shots of hard liquor, and he rear-ended a car that was stopped at a red light. (Tr. 46) The driver of the car he hit was hospitalized and filed a claim for personal injury that was paid by Applicant's insurance company. (Tr. 47)

Applicant pleaded guilty and was sentenced to 60 days in jail (suspended), placed on probation for two years, and ordered to attend alcohol-education classes and obtain counseling. (GX 6) He received counseling at least twice a week for 12 weeks, usually online because of COVID-19. He completed the required 12 weeks of counseling in August 2021. (Tr. 49-50) The counselor apparently made an impression on Applicant, because when he was asked at the hearing how many sessions he had with the counselor, he smiled and commented, "Love that lady. Love that lady." (Tr. 49) He testified that he did not believe he was diagnosed with an alcohol use disorder. There is no documentary evidence in the record reflecting the counselor's findings or diagnosis, if any.

Applicant was required to have an interlock device on his vehicle for 12 months. Due to an administrative mistake, the interlock was not removed until 18 months later. He had no interlock violations. (Tr. 60-61)

Applicant attended AA meetings once or twice a week. He did not have a sponsor, but he befriended two other attendees at the AA meetings. (GX 4 at 1) He stopped

attending AA meetings when he learned that he had lost his clearance. He testified, "I kind of gave up hope." (Tr. 52)

Applicant has not consumed alcohol since his arrest in November 2020. (Tr. 55) When he was asked why he did not seek additional treatment or counseling, he answered:

> Probably because I had gotten so aggravated and angry with myself that I, I just decided I am not going to be drinking again ever for the rest of my life. This is enough of this stupidness. And I just kind just threw alcohol out of my life. I'm around people that drink sometimes, but I have no desire to. I just don't want anything to do with it anymore.

(Tr. 53)

Applicant testified that he believes that his career is "pretty well at an end after 47 years." He has sold his house and moved to another state to live with his son. He believes that it is time to get back to where his family and children live. He has reestablished contact with his second wife, and they communicate "pretty much daily." He believes that he is "in a happy place" living near his family. (Tr. 57-58) When Department Counsel asked him why the Government should believe that he will not resume his old drinking habits, he responded, "It's just caused too many headaches and I don't foresee myself going back to that vomit pool. It's just a bad place to go. And I don't want anything to do with it. And it's, it's just like a bad piece of liver. You don't want it again." (Tr. 60)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan* at 531. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n,* 383 U.S. 607, 620 (1966). "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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan* at 531.

Analysis

Guideline G, Alcohol Consumption

The security concern under this guideline is set out in AG ¶ 21:" Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness." The following disqualifying conditions are potentially applicable:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

AG ¶ 22(b): alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder; and

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

All three disqualifying conditions are established. Applicant was punished for drunk driving in July 1992 for an incident that occurred while he was on duty. The arrests in May 2014 and November 2020 occurred when he was off duty.

The following mitigating conditions are potentially applicable:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

AG ¶ 23(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.

All three mitigating conditions are established. Applicant's alcohol-related incidents were frequent and did not occur under unusual circumstances, but they were separated by long periods of time and have not recurred for almost four years. His first incident was in July 1991, followed 23 years later by an incident in May 2014, and followed by an incident in November 2020, a little more than six years later. Three years have passed since he completed his probation.

Applicant has received counseling on several previous occasions, to no avail. However, his most recent court-ordered counseling apparently has been effective. Four factors may explain the difference. First, his conduct in November 2020 was the only time that his alcohol use injured another person. Second, he seemed to have had a rapport

with his most recent counselor ("Love that lady!"). Third, he has matured and realized that there is more to life than working and drinking. Fourth, he has moved from a solitary lifestyle with no support structure to one where he is surrounded by family.

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

The relevant disqualifying condition in this case is AG ¶ 31(b): "[E]vidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted."

The following mitigating conditions are potentially relevant:

> AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
>
> AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Both mitigating conditions are established, for the reasons set out in the above discussion of Guideline G.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to

which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines G and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, remorseful, and credible at the hearing. He served honorably in the U.S. Navy. He has held a security clearance for more than 20 years, apparently without incident. After weighing the disqualifying and mitigating conditions under Guidelines G and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his alcohol consumption and criminal conduct.

Formal Findings

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

Paragraph 1, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge