



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-02552
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

October 9, 2024

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On February 16, 2023, Applicant submitted a security clearance application (SCA). On April 2, 2024, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 13, 2024, and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 7, 2024. I convened the hearing as scheduled on July 2, 2024. The

Government offered Government Exhibits (GXs) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. The record was left open until August 2, 2024, for the receipt of additional evidence. On July 25, 2024, Applicant offered Exhibits (AppXs) A through E, which were admitted without objection. DOHA received the transcript of the hearing (TR) on July 11, 2024.

### **Findings of Fact**

Applicant admitted to all the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 38-year-old employee of a defense contractor. He has been employed with the defense contractor since December of 2020. Applicant is not married, and has no children. (TR at page 14 line 19 to page 16 line 4, and GX 1 at pages 5 and 9.)

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

2.a. In January 2008, Applicant was arrested for, charged with, and convicted of Conspiracy to Commit Crime – Vehicle Theft. He was sentenced to one day in jail, participated in a work program, and Applicant was placed on probation for three years. The consumption of alcohol was not involved in this arrest. (TR at page 43 line 9 to page 47 line 14, and at page 47 line 23 to page 49 line 21.)

1.a. and 2.b. In August 2008, seven months later, Applicant was arrested for, charged with, and convicted of Driving Under the Influence (DUI) of Alcohol. He admits consuming alcohol prior to his arrest. Applicant was sentenced to three days in jail, and again placed on probation for three years. (TR at page 18 line 8 to page 21 line 9.)

1.b. and 2.b. In January 2017, nine years later, Applicant was arrested for, charged with, and convicted of a second DUI. He admits consuming alcohol prior to his arrest. Applicant was sentenced to one month of imprisonment (suspended), and placed on probation, a third time, for three years. (TR at page 23 line 2 to page 26 line 15.)

1.c. and 2.b. In July 2019, two years later, Applicant was arrested and charged with Domestic Battery. He had a physical dispute with his, then, girlfriend. Alcohol was involved on behalf of both participants. As Applicant took the brunt of the battery, charges against him were dropped. (TR at page 28 line 5 to page 31 line 4.)

1.d. and 2.b. In March 2022, about two years prior to his DOHA hearing, Applicant was arrested for, charged with, and convicted of a third DUI. He admits consuming alcohol prior to his arrest. Applicant was sentenced to two days in jail, 26 hours of community service, required to attend an 18-month alcohol education program, and placed on probation, a fourth time, this time for five years. (TR at page 32 line 7 to page 35 line 22, and at page 37 line 16 to page 39 line 22.) Applicant is still on probation as a result of this fourth conviction, but has not consumed alcohol since his arrest.

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline G: Alcohol Consumption

AG ¶ 21 sets forth the security concerns pertaining to 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.

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(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; and

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

Applicant has three alcohol-related convictions between 2008 and 2022. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains three conditions that could mitigate security concerns.

(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.

None of these apply. Although Applicant has ceased consuming alcohol, he is still on probation as a result of his repeated, alcohol-related convictions. Once he is off probation; and still alcohol free, he may be eligible for a security clearance, but not now. It is too soon to say that his past alcohol related incidents and past lifestyle are not of present security significance. Alcohol Consumption is found against Applicant.

### **Guideline J: Criminal Conduct**

AG ¶ 30 sets forth the security concerns pertaining to 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 describes three 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 person was formally charged, formally prosecuted or convicted; and
- (c) individual is currently on parole or probation.

Applicant was convicted of four offenses. He is still on probation for another three years as a result of his 2022 conviction. The evidence establishes the above three disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

- (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.

Neither of these apply. Sufficient time has not passed since Applicant's 2022 DUI conviction, given the fact that he was previously convicted of two DUIs. Within the past two years, he was convicted of a third DUI and placed on probation for five years. Although he provided evidence of successful work performance with his employer (AppXs A~D), that evidence does not outweigh the fact that he is still on probation. The evidence does not establish mitigation under either of the above conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline G and J 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 respected in the workplace. (AppXs A~D.) However, overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a~1.d:	Against Applicant

Paragraph 2, Guideline J:

AGAINST APPLICANT

Subparagraph 2.a. and 2.b.:

Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge