



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01261
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/17/2024

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the alcohol consumption security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 5, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). Applicant responded to the SOR on March 2, 2024 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on September 3, 2024.

After conferring with the parties, I scheduled the matter for hearing on November 20, 2024. The hearing was convened as scheduled. I admitted Government Exhibits (GE) 1 through 9 and Applicant Exhibits (AE) A through E in evidence without objection. At Applicant's request, I left the record open until December 11, 2024, for the submission of post-hearing documents. Applicant timely provided one document, which I entered in the record as AE F, without objection. I received a transcript (Tr.) of the hearing on December 3, 2024.

## **Amendment to the SOR**

During the hearing, to have the SOR conform to the evidence, Department Counsel moved to amend the SOR by altering the language of SOR ¶ 1.c to read as follows:

1.c. In about January 2020, you were charged with DWI and DWI BAC of  $\geq .15\%$  in [City, State] after registering a BAC of .157. You pled guilty to DWI and were sentenced to 120 days confinement (suspended). In addition, you were ordered to pay fees and court costs and your driver's license was suspended until September 27, 2022.

For good cause shown, I granted Department Counsel's motion without objection. I offered Applicant a continuance of the hearing to another date to give him an opportunity to respond to the SOR amendment, but he chose to go forward with the hearing, as scheduled. He admitted the allegations in the amended SOR ¶ 1.c. (Tr. 57-66, 68)

## **Findings of Fact**

Applicant is a 29-year-old employee of a defense contractor. He has worked for his current employer since about 2018. He earned a bachelor's degree in 2018. He has never married but has cohabitated with his partner for over a year. He has no children. (Tr. 37-39; Answer; GE 1, 9)

In about March 2019, Applicant was arrested and charged with driving while intoxicated (DWI) in State A. He went out drinking with friends after work. He had planned to stay that night with a friend closer to where he worked. However, after drinking to intoxication, he decided that he would make the one-hour drive back to his home. On his way home, he crashed his car into a guardrail and totaled his car. Police arrived and arrested him for DWI. A blood test taken after his accident revealed that he had a blood alcohol content (BAC) of .151 percent. He spent the night in jail and was released the next day on his own recognizance. After this DWI, he stopped drinking alcohol for a month or two because of thoughts of his father, who, by all accounts, was an alcoholic. (Tr. 33-37, 41-45, 49-50, 67; Answer; GE 1, 3, 4, 7-9)

Before the appropriate court could rule on Applicant's March 2019 DWI, in June 2019, he was arrested and charged with another DWI in State A. He had been celebrating his birthday at bars with friends, where he had a combination of about six beers and four shots of liquor between about 9:00 p.m. and about 12:30 a.m. the following morning. He claimed he did not feel intoxicated, so he left the bar to drive home at about 2:00 a.m. A police officer pulled him over for making an illegal right turn at a red light. After admitting to responding police officers that he had been drinking, he failed a field sobriety test. He refused a police request for a voluntary blood draw, but police obtained a subpoena and performed the blood draw, the result of which was a .111 percent BAC. (Tr. 33-37, 45-50, 67; Answer; GE 1, 2, 4, 7-9)

Before the appropriate court could rule on Applicant's two 2019 DWIs, in January 2020, he was arrested and charged for a third time with DWI. After work that day, he participated in his bowling league and then went out for dinner and drinks with one of his friends. He drank until about 2:00 a.m., then he drove home. While he drove home, he realized he should not be driving because of how intoxicated he was, and pulled his car over to the shoulder of the road so that he could call a friend to pick him up and drive him home. However, before he could contact this friend, a police officer pulled up on the shoulder of the road behind his car. The police officer asked him if he had been drinking and gave him a field sobriety test after Applicant acknowledged that he had. Applicant failed the field sobriety test, police arrested him for DWI, and he spent another night in jail. (Tr. 33-37, 50-54, 68; Answer; GE 1-4, 7-9)

In October 2020, the court ruled on all three of Applicant's DWIs. For the March 2019 DWI, he pleaded *nolo contendere*. The court ordered that he complete 80 hours of community service, sentenced him to 360 days confinement (all suspended), and assessed him fees and costs totaling \$307. For the June 2019 DWI, he pleaded *nolo contendere*. The court ordered that he complete 80 hours of community service, sentenced him to 180 days confinement (all suspended), and assessed him fees and costs totaling \$907. For the January 2020 DWI, he pleaded guilty. The court ordered that he serve 120 days in prison (all suspended), placed him on community supervision for 12 months, and assessed him fees and costs. He was also not permitted to consume alcohol for 22 months. He complied with all the court's orders related to these sentences. (Tr. 33-37, 41-57, 69; Answer; GE 1-4, 7-9; AE D, E)

Applicant attended Alcoholics Anonymous (AA) meetings twice weekly from the end of February 2020 until February or March 2022. He stopped attending meetings after the meeting location changed. He did not know or seek out the new location. In March 2020 and from May 2020 until August 2020 (interruption because of the COVID-19 pandemic), he utilized a program provided by his employer to undergo mental-health and alcohol-related counseling. His counselor, a licensed professional counselor (LPC), listed his presenting problem as alcohol abuse and wrote that his signs and symptoms were consistent with alcohol abuse. Applicant claimed he stopped this program because the LPC missed an appointment. The LPC noted that Applicant was coping well and did not require further psychological evaluation. (Tr. 70-79, 84-89; GE 5, 7, 9; AE C)

On March 10, 2023, at DOD's request, Applicant underwent an assessment by a licensed psychologist (Psychologist A). Psychologist A issued a report based upon that assessment dated March 23, 2023. As part of the assessment, Psychologist A interviewed him and had him complete a standardized psychology inventory called the Personality Assessment Inventory (PAI). In his report, Psychologist A noted that Applicant had one significant elevation on the Alcohol Problems scale, but that "this elevation is to be expected and is in a range that is consistent for one who has a history of personal, legal, physical or occupational consequences secondary to problematic use of alcohol." (GE 7)

Psychologist A opined that Applicant no longer meets the diagnostic criteria for alcohol use disorder. He noted Applicant's abstinence followed by modified

consumption and stated that “[h]is current habits with alcohol appear to be moderate and without adverse consequences or behaviors.” Of note, Psychologist A claimed that, during earlier treatment with the LPC, the LPC found that Applicant presented with an alcohol use disorder. However, there is no evidence in the record to support this statement. The LPC’s records that are in evidence show that Applicant presented with “alcohol abuse.” (GE 7; AE C)

Psychologist A’s prognosis for Applicant was guarded, because “it may be premature to say that sufficient time has passed since he has resumed drinking to be confident that similar adverse effects are unlikely to recur.” He noted that Applicant began drinking again when his probation ended and that his restlessness and impulsivity could contribute to his poor judgment when drinking. He also wrote that Applicant was beginning to consume alcohol again under the same circumstances that led to his binge drinking in the past. He recommended that Applicant pair his modified drinking with professional treatment and guidance. (GE 7)

Applicant testified that, in April 2024, he learned that Psychologist A suggested that he obtain additional alcohol counseling. He sought and received alcohol-related and mental health treatment from another psychologist (Psychologist B) for approximately 10 sessions from about April 2024 to July 2024. He testified that he stopped receiving treatment from Psychologist B because Psychologist B told him that he did not require further treatment unless Applicant thought he needed it. A December 9, 2024 letter from Psychologist B confirmed his treatment dates, stated that he complied with all expectations requested of him, and that Applicant has reported no significant concerns regarding his alcohol usage. Psychologist B wrote that Applicant told him that he would reach out to Psychologist B for support if he felt “at risk.” Applicant had one phone call with Psychologist B because of anxiety after his July 2024 treatment ended. (Tr. 80-84; GE 7; AE F)

Applicant stayed sober from the day of his January 2020 arrest until August 2022. In August 2022, he decided to begin consuming alcohol again because he missed the social aspect of it. The first day he drank, he had three to five drinks at home with friends to test how much he could drink and stay in control. After that, he has consumed no more than two drinks in a social setting every couple of months. Throughout 2023 until about five months ago, he occasionally drank part of an alcoholic beverage before driving, but since then, has not consumed any alcohol before he drives. Part of the reason he felt comfortable drinking even part of a drink before driving is that he had an ignition interlock device on his car that he would use to determine if he had too much to drink before driving. When he no longer had the ignition interlock device on his vehicle, he did not feel comfortable having anything to drink before driving, so, in about April 2024, he stopped consuming even part of a drink before driving. He still participates in a bowling league, but he does not consume alcohol when he bowls. (Tr. 70-79, 84-89; GE 5, 7, 9; AE C)

Applicant has changed the people with whom he associates and claimed that he only surrounds himself with people who truly care about him. He believes that his current modified consumption plan works for him, and he feels he is in control of his

drinking on the infrequent occasions when he drinks. (Tr. 70-79, 84-89; GE 5, 7, 9; AE C)

Applicant performs well at his job and was promoted in 2022 and 2024. A character witness, who served honorably in the U.S. Navy and held a security clearance, testified that Applicant has shown growth and maturity and has learned from his mistakes. He stated Applicant is a positive role model and has overcome his past struggles. The character witness was aware of two of the three times that Applicant had been arrested for DWI. He stated that he knows that Applicant has attended AA, and when he infrequently drinks, he drinks one beer. Applicant also provided two character-reference letters; one from a long-time friend and one from a former work supervisor. Both individuals note that he is honest, trustworthy, and shows integrity. (Tr. 33-34, 37-38, 80-84; Answer; AE A, B)

### **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(c), 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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;
- (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.

Applicant was charged with DWI three times between March 2019 and January 2020. He pleaded *nolo contendere* to the first two charges and pleaded guilty to the last. He acknowledged that he was impaired while driving on two of these occasions after binge drinking. AG ¶¶ 22(a) and 22(c) are established.

AG ¶¶ 22(d), 22(e), and 22(f) are not established. There is insufficient evidence that Applicant was diagnosed with an alcohol use disorder and therefore no evidence that he did not follow treatment advice after such a diagnosis. While Psychologist A wrote that the LPC stated that Applicant presented to the LPC with an alcohol use disorder, the LPC's records in evidence show that the LPC found he presented with alcohol abuse. Furthermore, Psychologist A found that Applicant did not meet the criteria for an alcohol use disorder diagnosis.

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; and

(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.

It has been almost five years since Applicant had an alcohol-related legal incident. He has not been intoxicated since about August 2022, when he intentionally became so in what he considered a controlled environment. I find that sufficient time has passed without recurrence of legal problems or binge drinking to show both those behaviors are unlikely to recur. AG ¶ 23(a) applies.

Applicant acknowledged that he needed to change his relationship with alcohol. He attended AA meetings and sought alcohol-related treatment from a work-sponsored professional counselor. When he learned Psychologist A recommended that he continue to receive alcohol-related treatment in conjunction with his plan of modified consumption, he sought and received treatment from Psychologist B. He has modified his alcohol consumption, and now consumes no more than two drinks about twice per month.

Psychologist A's March 2023 "guarded" prognosis (along with a finding that Applicant did not have an alcohol use disorder) was largely based upon Applicant's need for further treatment, and a need for more time to pass to see if Applicant could maintain his modified consumption without resorting to binge drinking. Another year and one-half has passed without evidence of more binge drinking or alcohol-related legal problems, and he sought and received additional treatment. I find that he has

acknowledged his pattern of maladaptive alcohol misuse, provided evidence of actions to overcome this problem, and demonstrated a clear and established pattern of modified consumption. AG ¶ 23(b) applies.

### **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 have incorporated my comments under Guideline G in my whole-person analysis. I have also considered Applicant's positive character references. While, at first blush, an individual who had three DWIs may seem unworthy of holding a security clearance, my adjudicative goal is not to punish an individual for his or her past deeds. He sought treatment, worked to change his relationship with alcohol, and provided evidence of that change through the passage of time without legal incidents and without binge drinking. I find that he has removed judgment, trustworthiness, and reliability concerns. He has mitigated the Guideline G 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 G:	FOR APPLICANT
Subparagraphs 1.a-1.e:	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.



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Benjamin R. Dorsey  
Administrative Judge