



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



In the matter of:)
)
) ISCR Case No. 23-01216
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro Se*

08/20/2024

Decision

TUIDER, Robert, Administrative Judge

Applicant mitigated security concerns regarding Guidelines J (criminal conduct) and G (alcohol consumption). Clearance is granted.

Statement of the Case

On August 19, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On June 9, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J and G. The SOR detailed reasons why the DCSA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 13, 2023, Applicant submitted his Answer to the SOR.

On August 23, 2023, Department Counsel was ready to proceed. On August 30, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On September 21, 2023, DOHA issued a notice of hearing scheduling the hearing for November 15, 2023. The hearing was convened as scheduled. Department Counsel submitted Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified, did not call any witnesses, and submitted Applicant Exhibit (AE) A, which was admitted without objection. I held the record open until January 5, 2024, to afford the Applicant an opportunity to submit additional evidence. Applicant did not submit

any post-hearing evidence. On November 28, 2023, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 52-year-old egress systems technician employed by a defense contractor since August 2022. He has an interim Secret security clearance and seeks a permanent Secret security clearance Which is a requirement of his continued employment. (Tr. 12-15)

Applicant did not receive his high school diploma but did earn his GED in 2007 after enlisting in the U.S. Navy. He attended a technical college from August 2011 to May 2013, received a certificate of completion, and earned a commercial aviation mechanic airframe and powerplant license. Applicant later attended a truck driving school from February 2017 to March 2017 and received a Class A commercial driver's license. (Tr. 15-21; GE 1) He served in the Navy from November 2006 to May 2011, and was honorably discharged as an aviation structural mechanic third class (pay grade E-4). He then served in the Navy Reserve from June 2011 to November 2012. While on active duty, Applicant made four deployments. He received a 30% Veterans Affairs (VA) service-connected disability rating. (Tr. 21-25)

Applicant was married from April 2010 to March 2016. That marriage ended by divorce. He has four daughters, including two independent adult daughters from a previous relationship and a teenage daughter from another relationship. He has a teenage daughter with his former wife. Applicant currently pays \$350 in monthly child support to the mother of his third daughter and has an informal arrangement with his former wife in which he provides for his daughter's "cost of living and all her schooling and tuition for her school." (Tr. 25-31)

Criminal Conduct and Alcohol Consumption

Four allegations were cited under Criminal Conduct: (1.a) In October 2021, Applicant was arrested and charged with driving under the influence (DUI) in State A. He pled nolo contendere and was sentenced to 20 days in jail (16 suspended), three years of probation, and to pay \$1,873 in fines; (1.b) In May 2019, Applicant was arrested in State B for a bench warrant issued in 2003 for failure to resolve a traffic ticket for driving with a suspended license; (1.c) In January 2000, Applicant was arrested and charged with operating a vehicle while intoxicated in State C. He pled guilty (sentence information not available); and (1.d) In September 1997, Applicant was arrested and charged with operating a vehicle while intoxicated in State C. He pled guilty (sentence information not available). One allegation was cited under Alcohol Consumption, which cross-alleged the DUI charges in subparagraphs 1.a, 1.c., and 1.d under this concern.

These allegations are established by: (1) Applicant's August 19, 2019 SF-86; (2) his Office of Personnel Management (OPM) Report of Investigation (ROI), Personal Subject Interview (PSI) conducted on October 22, 2019, with follow-on contact; (3) his

September 22, 2022 Response to Interrogatories; (4) State A court records for 2021 DUI, various dates; (5) State B court records for bench warrant, various dates; (6) State C court records for 2000 DUI, printed June 1, 2023; (7) State C court records for 1997 DUI printed June 1, 2023; (8) Applicant's June 13, 2023 SOR Answer in which he admitted all allegations; and (9) his hearing testimony. (GE 1 - 7; SOR Answer; Tr. 31- 63)

With regard to Applicant's October 2021 DUI arrest in State A, he added that he was also ordered to attend a nine-month "DUI Traffic School," which provides counseling services for those arrested for DUI. He provided documentation that he attended the School from November 2022 to August 2023 and received a Notice of Completion. (SOR Answer; Tr. 32-41; AE A) In 2019, Applicant "stopped drinking after the incident that occurred to [him in State B]." He was motivated to stop drinking due to various family and personal problems. However, referring to the October 2021 DUI arrest, Applicant stated, "And unfortunately, on that day, October 20th, I didn't see any harm in being with a friend." Until then, he had been completely sober from 2019 to October 2021. Since Applicant's October 24, 2021 DUI arrest, Applicant has not consumed any alcohol. (Tr. 41-44, 66, 72)

Applicant's October 2021 DUI arrest in State A and the nine-month DUI Traffic School he attended had a profound affect on him. Regarding his intention to resume drinking, Applicant stated:

No, no. It's something I don't need in my life. I sit at home every day on the weekend. I just came off a four-day weekend and had no - I have no will to want a beer.

I have other friends in my circle of friends that have gone to AA as well. I've encouraged them to save their marriage. And I think I've done enough drinking in my life and in the Navy and traveling the world to just say it's enough. I have seven grandchildren that I have to - that I want to be a grandfather to and be an inspiration instead of them having to hear about their grandfather having a problem. (Tr. 44)

Applicant testified that he participates in online addiction recovery meetings and "listen(s) to a lot of people's issues. And if I can chime in, I chime in." He added:

But mostly, I talk to a lot of young kids that are hell bent still being young Marines. I try to give them a little bit of advice to slow it down and to preserve their career because the outcome is very detrimental to their future. So I try to encourage them to slow it down.

These young kids are full of piss and vinegar. And I was one of those kids. But I'm really trying to advocate to stop drinking in my shop, in my department, on my base. I wish I was a lot more - this intelligent or this loaded with information at an earlier age. But unfortunately, that wasn't the case for me. I had to learn at a late age. (Tr. 45-46)

Applicant testified that he was scheduled to complete his three-years of probation (with credit for good behavior) in August 2024 following his October 2021 DUI arrest. The

terms of his probation did not require him to report to a probation officer. He paid all of his fines and satisfied all of his sentencing requirements. (Tr. 46, 67) He has never been formally diagnosed with an alcohol use disorder but admitted that he is an alcoholic. He learned coping mechanisms in DUI Traffic School, coping mechanisms that he did not have during or after his 1997 and 2000 alcohol-related traffic stops. These stops occurred before he joined the Navy in 2011. (Tr. 48-50, 66-68) Applicant and his circle of friends do not drink. The door remains open to Applicant to reach out to staff members at the DUI Traffic School if needed. (Tr. 54-55)

Applicant was arrested in May 2019 in State B on a 2003 bench warrant for failure to resolve a traffic ticket for driving with a suspended license. This bench warrant was issued over three years before Applicant enlisted in the Navy in 2006. He was unaware that he was the subject of an outstanding bench warrant. Applicant went to court following this arrest and resolved all unpaid fines. (Tr. 56-62, 73-75; GE 3, GE 5) The remaining 1997 and 2000 alcohol-related arrests were pre-service and occurred 26 and 23 years ago, respectively.

Applicant's employer tests him five times a year for drugs and alcohol, and he has never tested positive. (Tr. 66)

Character Evidence

Applicant states that he likes to be prepared and starts his workday at 6 AM as the pilots at the base where is employed begin flying between 8 AM and 9 AM. He finds his work "almost therapeutic" and likes to volunteer wherever he can, adding that "I love my job immensely." Working in the field of aviation and working with pilots has been a passion for him. He emphasized that he is "not a 9:00 to 5:00er at Home Depot." (Tr. 47-48) Applicant apologized to the Court "for having to be here," and acknowledged his mistakes. He stated:

I am thankful for everything that I got to experience in the military and afterwards in the job that I perform now. If I'm given the opportunity to continue, I am grateful and still will strive to never go through this again. I am more confident and equipped with help now to not cross that line.

The pilots' lives are in my hands when I'm at work because with all the tech work that I do, they wouldn't survive their flight. And I take my job seriously. I am at peace in my life. I finally have peace that I never got to experience. My children are okay. The mothers of my children are okay. Their lives are very prosperous.

All I want to do is age well and be in a healthy state of mind and health environment. Any being at work is my healthy environment. It gives me purpose.

And I just beg the Court to let me continue to do what I do so I can help others because that's all I've known and enjoy on a daily basis. My problems, they are what they are. And I agree. Every one of these things

are true. But it's just my life. I didn't write. I walked through it. That's all I have to say, Your Honor. (Tr. 62-63)

Applicant receives \$612 per month for his 30% VA disability rating. He gives the entire amount to his youngest daughter and her mother. (Tr. 64) His employer pays him \$42.50 per hour, and he volunteers for overtime at every opportunity. He estimates his annual salary to be about \$100,000. (Tr. 65)

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 AG ¶ 2(d), describing 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 clearance favorable 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).

Alcohol Consumption

AG ¶ 21 describes the 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 provides one alcohol consumption condition that could raise a security concern and may be disqualifying in this case as follows:

(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.

The record evidence establishes concerns under AG ¶ 22(a). Additional discussion is in the mitigation section, *infra*.

AG ¶ 23 lists four conditions that could mitigate Alcohol Consumption 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;

(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.

Applicant was involved in three alcohol-related incidents involving the police and courts. The first two incidents occurred in 1997 and 2000. They occurred 26 and 23 years ago, respectively, and long before Applicant enlisted in the Navy in 2006. These two incidents also would have been vetted when Applicant screened for a security clearance when he was in the Navy. Given the length of time that has elapsed since they occurred, they are of limited security significance, but not irrelevant. Of greater concern is Applicant's 2021 DUI arrest, which is relatively recent. Applicant completed all of his sentencing requirements following this arrest. At the time of his hearing in November 2023, he was still on probation, but completed it in August 2024.

Of note, Applicant attended a nine-month DUI Traffic School following his October 2021 arrest. His attendance at that School made a profound impact on him. With the coping mechanisms he learned at the DUI Traffic School, he has been able to maintain total sobriety since October 24, 2021, the day he was arrested for his last DUI. Applicant's circle of friends do not drink, and his life is centered on his work and family. The door remains open to him to reach out to the DUI Traffic School staff, and he also participates in an online addiction recovery group. He had negative results for drugs and alcohol tests administered by his employer five times a year. Based on the foregoing, AG ¶¶ 23(a), 23(b) and 23(d) fully apply. Alcohol consumption concerns are mitigated.

Criminal Conduct

AG ¶ 30 describes the 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 describes 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 individual was formally charged, prosecuted, or convicted; and
- (c) individual is currently on parole or probation.

Security concerns under AG ¶¶ 31 (a), 31 (b), 31 (c) are established. Discussion is in the mitigation section, *infra*.

AG ¶ 32 lists conditions that could mitigate security concerns:

- (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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

Applicant's 2019 arrest for a 2003 bench warrant for failure to resolve a traffic ticket has been resolved and is of limited security significance due to the time that has elapsed since the original bench warrant was issued. At the time of his hearing, he was on probation which was scheduled to end in August 2024. Additionally, mitigation of the criminal conduct security concerns cross-alleged under this concern is established under AG ¶¶ 32(a) and 32(d), for reasons discussed in the alcohol consumption mitigation section, *supra*. Criminal conduct concerns are mitigated.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. A careful weighing of a number of variables in considering the "whole-person" concept is required, including the totality of his or her acts, omissions, and motivations. Each case is decided on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, 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), "[t]he ultimate determination" of whether to grant or continue national security eligibility "must be an overall common-sense judgment based upon careful consideration of the [pertinent] guidelines" and the whole-person concept. My comments under Guidelines G and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed in my discussion of those guidelines, but some warrant additional comment.

Applicant is a 52-year-old egress systems technician employed by a defense contractor since August 2022. He finds satisfaction in knowing that the planes he works on are maintained to the highest standards. He acknowledged his failures and shortcomings and has come to grips with adverse effects of alcohol. He attended DUI Traffic School from November 2022 to August 2023. He was very positive going forward. The fallout following Applicant's most recent October DUI arrest has not been lost on him and, as a result, he has been sober ever since.

Applicant recognized the severity and self-destructive nature of alcohol abuse. He has embraced the coping mechanisms he acquired from attending DUI Traffic School. He recognizes that one drink is one drink too many. Applicant also recognizes that holding and maintaining a clearance is a privilege. Applicant's firm commitment to sobriety is further demonstrated by the length of his sobriety which supports a favorable whole-person assessment.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant's evidence was sufficient to overcome the *Dorfmont* presumption with respect to the security concerns in the SOR.

I have carefully applied the law, as set forth in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated the Guidelines G (alcohol consumption) and J (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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J: Subparagraphs 1.a - 1.d:	FOR APPLICANT For Applicant
Paragraph 2, Guideline G: Subparagraph 2.a:	FOR APPLICANT For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert Tuidor
Administrative Judge