



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



In the matter of:)
)
) ISCR Case No. 23-01596
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

03/27/2025

Decision

Hyams, Ross D., Administrative Judge:

Applicant failed to mitigate the alcohol consumption security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 11, 2022. On October 16, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption). Applicant responded to the SOR on November 7, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 5, 2024.

The hearing was convened as scheduled on December 18, 2024. Department Counsel submitted Government Exhibits (GE) 1-11, which were admitted in evidence without objection. Applicant's Exhibits (AE) A-O were attached to his SOR Answer. At the hearing he submitted AE P-R, which admitted in evidence without objection.

Findings of Fact

In his answer, Applicant denied SOR ¶ 1.a and admitted the rest of the SOR allegations with explanation. His admissions are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 61 years old. He earned a bachelor's degree in 2010. He was married in 2001 and has two adult stepchildren. He has possessed a security clearance since about 2010. He works as the director of maintenance for a government contractor in an aviation field. (Tr. 13-20; GE 1)

The SOR alleged the following concerns under Guideline G:

SOR ¶ 1.a alleged in 2021 Applicant was diagnosed with Alcohol Use Disorder, Moderate, while in alcohol counseling from October to November 2021. Abstaining from alcohol use was recommended. He claimed that he was unaware of this 2021 diagnosis. He claimed to have found out after receiving the SOR in 2023 and getting documentation for his case. However, a treatment plan and goal document, which Applicant signed in October 2021, shows the diagnosis and goal to abstain from alcohol. The signature matches ten of his signatures on the following page showing his attendance in the program. He completed 20 hours of counseling in this program, two hours a week for ten weeks. The documentation from the counselor only reports him having three prior convictions. It's not clear they knew his full history of DUIs and alcohol abuse. (Tr. 15-41; AE N, O; GE 3, 4, 7)

SOR ¶ 1.b alleged that Applicant continues to consume alcohol despite the diagnoses and treatment recommendations alleged in ¶ 1.a. He stated that getting older has changed his habits and relationship to alcohol. He reported the change started in 2004. His primary takeaway from the counseling was that his alcohol consumption should be limited to one drink an hour, two drinks a day, and never more than three drinks a day. He claimed he only drinks one or two beers at a time, one or two days a week. He claimed he has not been intoxicated since his last arrest. (Tr. 15-41; GE 2)

SOR ¶ 1.c alleged Applicant was arrested in October 2021 and charged with Driving While Impaired (DWI) with a BAC of .22. He was also charged with failure to maintain lane control and civil revocation of driver's license. He was convicted and had restrictions placed on his driver's license; an interlock device was installed on his vehicle; and he was ordered to attend alcohol counseling. He reported he is only allowed to drive to work and cannot drive between 6 PM to 8 AM. He reported the court lowered the allowable blood alcohol content (BAC) on his license to .04, with .08 normally considered intoxicated. These restrictions on his license continue through 2026. This arrest occurred after he went to a concert alone and drank beer. His BAC at the time of arrest was almost three times the legal limit. He testified he had no memory of how many beers he drank at the concert. He could not locate the hotel where he was supposed to stay, so he decided

to drive home, which was two hours away. He drove for about 45 minutes after the concert before he was stopped by police. (Tr. 15-69; GE 2)

SOR ¶ 1.d alleged Applicant was arrested in March 2004 and charged with DWI. He pled guilty and was sentenced to 60 days in jail (suspended), 3 years probation, and fined. He reported his sentence was suspended because he was living in another state at the time but agreed with the rest of the allegation. (Tr. 15-41; GE 10)

SOR ¶ 1.e alleged Applicant received alcohol treatment from August to November 1999 for the condition diagnosed as alcohol dependency. He reported that he was made aware of the diagnosis at the time and agreed with it. (Tr. 15-41; GE 5, 8)

SOR ¶ 1.f alleged Applicant's security clearance was denied in 1999 for alcohol consumption security concerns. He admitted this was accurate. He reapplied after a year. He reported his clearance was revoked again for a time after his 2004 DWI. He admits he had an alcohol problem during this time. (Tr. 15-69; GE 11)

SOR ¶ 1.g alleged Applicant was arrested in December 1997 and charged with Driving Under the Influence of Alcohol (DUI) (second offense in a year), DUI with a BAC of .21, improper exit or entry on a highway, and driving with suspended privileges. He plead guilty to the first and fourth charge, was fined, and sentenced to 90 days in jail under the work release program. He admitted this was accurate and reported that he was able to work while serving his sentence. (Tr. 15-41; GE 5, 6, 9)

SOR ¶ 1.h alleged Applicant was arrested in 1997 and charged with DUI with a BAC of .18. He was found guilty. Sentenced to two days in jail, fined, and his license was suspended. He admitted this allegation was accurate. (Tr. 15-41; GE 5, 9, 10)

SOR ¶ 1.i alleged Applicant was arrested in 1989 and charged with two counts of DUI. He was found guilty, sentenced to 30 days in jail, required to complete alcohol education classes, and his license was suspended. He reported the sentence was house arrest for 15 weekends, not jail time, but admitted the rest of the allegation is accurate. (Tr. 15-41; GE 9)

SOR ¶ 1.j alleged Applicant was arrested in 1988 and charged with DWI. He was convicted and ordered to perform community service and fined. He admitted the allegation. (Tr. 15-41)

SOR ¶ 1.k alleged Applicant was arrested in 1987 and charged with public intoxication and disturbing the peace. He was found guilty and fined. He claimed the arrest occurred in a different state than alleged but admitted the rest of the allegation. (Tr. 15-41)

SOR ¶ 1.l alleged Applicant was arrested in 1982 and charged with DUI with a BAC of .17. He was found guilty, fined, and had his license suspended. He has little memory of this incident but admitted it's accurate. (Tr. 15-41; GE 9)

In January 2024, Applicant had an online interview with a psychologist. Dr. E, who was given a copy of the SOR and the case documentation. Dr. E had Applicant take a phosphatidylethanol (PEth) test on January 18, 2024, and on February 1, 2024, to measure alcohol in his blood stream over the prior several weeks. Applicant's first PEth test result was an 89, and the second result a two weeks later was a 32. Dr. E stated that levels showing excess drinking are over 200. He reported while Applicant has engaged in risky behaviors while under the influence of alcohol, Applicant has not had symptoms of alcohol use disorder since early 2022. Dr. E did not think alcohol use disorder still exists at this time because he has had no recent incidents. (AE P)

Applicant told Dr. E that he stopped drinking after Christmas 2023. Dr. E used that information to determine that his prognosis was good. He did not explain how he thought Applicant's claim of abstinence was credible, since his PEth tests showed that Applicant had alcohol in his system more than four weeks after December 2023. Applicant testified that he started drinking again in March, around his birthday. He did not inform Dr. E of this change when he wrote his report in March 2024. (Tr. 15-69; AE P; GE 2)

At the hearing. Applicant reported that he is still drinking. On November 29, 2024, his PEth result was 49. This lab report for this test stated that results in excess of 20 are evidence of moderate to heavy alcohol consumption. Applicant asserted that he is amenable to stop drinking but has yet to do so. He signed a sworn statement that he will not misuse alcohol or drink and drive in the future. (Tr. 41-69; AE Q)

The only alcohol treatment Applicant had was court ordered after his 1999 and 2021 DUIs. He does not believe he has an alcohol problem anymore but acknowledges he did as recently as 2004. He stated over the years he has learned to control it and not drink to excess. Despite this claim, he recognizes that his BAC from his 2021 DUI was higher than any of his other arrests. He has made several previous claims that he stopped or moderated his drinking. He was also fired from an aviation job in 1996 after using cocaine and testing positive on a drug test administered by his employer. While this allegation was not alleged in the SOR, it is considered for whole person purposes. While his wife rarely drinks, his friends and associates from work are drinkers. He claimed that he will not go out with them. (Tr. 41-69; GE 5, 6)

Applicant provided four character letters which state that he is a good employee, trustworthy, and reliable. It is not clear that the writers knew about Applicant's full history of DUIs and alcohol issues. He also provided education, certification, and employment documentation. (Tr. 41-69; AE C-I, L, M, R)

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 ¶ 2I, 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

AG ¶ 21 details the personal conduct security concern:

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.

I have considered the disqualifying conditions for alcohol consumption under AG ¶ 22 and the following are applicable:

- (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.

I have considered the mitigating conditions 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;
- (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.

None of the mitigating conditions apply. Applicant has alcohol related arrests going back to the 1980's. He continues to drink despite being diagnosed with alcohol dependency in 1999 and alcohol use disorder in 2021, and both times he was told to abstain from alcohol. He acknowledged that he has had a significant problem with alcohol over many years. In 2024, he hired Dr. E to evaluate him for his security clearance case. Applicant told Dr. E that he stopped drinking in December 2023, and did not tell him he started drinking again in March 2024. There is a conflict between Dr. E's assessment of the January and February 2024 PEth tests and the November 2024 results and lab analysis. Dr. E credited Applicant's assurances of abstinence and moderation too greatly, considering Applicant's past claims of abstinence and moderation, which were not sustained, and his long history of severe alcohol abuse and resulting legal problems. I give Dr. E's evaluation little weight.

Applicant's consumption of alcohol is ongoing, and he has only had treatment when he needed it for his legal cases. His claims that he will never abuse alcohol, or drink and drive again are not credible. The record shows that he cannot control his alcohol use. Applicant's clearance was revoked for similar concerns in 1999, and the behavior has persisted. He continues to have limitations on his driver's license. I cannot find that this behavior happened under circumstances unlikely to recur, and it continues to cast doubt on his reliability, trustworthiness, and judgment. The alcohol consumption security concerns are not mitigated.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered his character letters, and his education, certification, and employment documentation. I have incorporated my comments under Guideline G in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not mitigated the alcohol consumption 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: AGAINST APPLICANT

Subparagraphs 1.a-1.l: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge