



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



In the matter of:)
)
) ISCR Case No. 24-00928
)
)
Applicant for Security Clearance)

Appearances

For Government:
Aubrey M. De Angelis., Esquire, Department Counsel

For Applicant:
Pro se

05/21/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on August 22, 2023 (Questionnaire). On September 17, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and J. The action was taken under Executive Order 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) effective within DoD after June 8, 2017.

Applicant responded to the SOR allegations on October 2, 2024 (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 29, 2025. The case was assigned to me on February 10, 2025. DOHA sent Applicant a Notice of Hearing on March 10, 2025, scheduling the case to be heard via Microsoft Teams video teleconference on April 4, 2025.

I convened the hearing as scheduled. Department Counsel offered six documents marked as Government Exhibits (GE) 1 through 6. Applicant waived any objections to GE 1 and GE 3-6. GE 2 is an unadopted Report of Investigation summarizing Applicant's January 4, 2024 security interview prepared by a U.S. Government investigator. Applicant was advised at the hearing of her right to object to the admission of the document on the ground that summary is unauthenticated by a Government witness. She asked for time to review the proposed exhibit after the hearing before deciding whether to object or to waive any objections to it. Applicant testified but did not submit any documentary evidence at the hearing. I left the record open until April 18, 2025, to give her the opportunity to supplement the record and to decide if she objected to GE 2. She submitted a summary and six other documents in a timely manner. I marked the summary as Applicant Exhibit (AE) A and the six documents as AE B through G. In AE A, Applicant indicated that she waived any objection to GE 2. (Tr. at 10-14.)

On April 21, 2025, Department Counsel responded to Applicant's post-hearing submission. She raised no objection to Applicant's exhibits and submitted copies of three state statutes in response to one of Applicant's exhibits (AE F). On April 25, 2025, I asked Applicant in an email to clarify that the document she was waiving any objection to was, in fact, GE 2, and whether she had any comments on the three statutes, which I have marked as Administrative Notice (AN) I through III. I asked for her to respond by April 30, 2025. She declined to make any further comments. The record closed on April 30, 2025. AE A through G and GE 1 through 6 are admitted into the record without objection. I have also admitted into the record AN I through III for administrative notice purposes. DOHA received the transcript of the hearing (Tr.) on April 11, 2025. (Tr. at 10-14, 58-59.)

Findings of Fact

Applicant is 36 years old. She received a bachelor's degree in 2010. She has been employed by a U.S. Government contractor since September 2017. She was promoted to manager in June 2023 and relocated from State A to State B. In August 2023, Applicant submitted a security clearance application for the first time. She is not married and has no children. (Tr. at 16, 18; GE 1 at 5, 9-11, 16-17, 28.)

The Government alleged in the SOR that Applicant is ineligible for a security clearance due to her having been arrested and convicted on three occasions in the last ten years. In the Answer, Applicant admitted the allegations and added some comments in mitigation. I find the following facts as set forth in the pleadings, developed at the hearing, and detailed in the documentary record.

Paragraph 1, Guideline G (Alcohol Consumption)

Under this guideline, the Government alleged that Applicant has been arrested in 2015, 2016, and 2021, charged with Driving While Impaired (DWI) or the equivalent, and convicted of the offenses.

SOR ¶ 1.a. October 31, 2021 Arrest. At about 9:50 pm, Applicant was involved in a collision with a fire department vehicle at an intersection in State A. After failing standard field-sobriety tests and refusing to take a breath test to measure her blood-alcohol content (BAC), she was arrested and charged with DWI - First Offense and Failure to Exercise Due Care to Avoid Colliding with Emergency Vehicle. Applicant testified at the DOHA hearing that her vehicle was “t-boned” at an intersection by a fire department vehicle. The police accident report indicates that the fire department vehicle had its lights and sirens activated at the time. She suffered a “bad concussion.” At her booking, she was charged with six other violations, including Refusal to Take Breath Test. In court, the prosecutor increased the DWI-First Offense charge to DWI with a Previous Conviction with Ten Years (DWI 10), a felony. (Tr. at 23; GE 3 at 11, 13; GE 4 at 1; AE F at 1-2.)

Applicant entered a diversion program to avoid being convicted of the felony charge. She was conditionally discharged in a one-year alcohol abuse program and was ordered to be assessed for alcohol abuse and to participate in supervised probation for one year. Her probation began on January 25, 2022, and was completed on January 25, 2023. She was required to meet with her probation officer once a week. For six months, she had to wear a bracelet that continuously measured her BAC and an ankle monitor and was prohibited from drinking alcohol. Applicant was also fined \$5,000, and her driver’s license was revoked for one year. Upon the completion of her probation and the diversion program, Applicant entered a plea of guilty to DWI-First Offense and was formally convicted. She had two alcohol assessments while in State A. At the DOHA hearing, she asserts that no treatment was recommended. She testified that she experienced difficulties obtaining a required final alcohol abuse assessment before she relocated to State B in June 2023 and has only recently found an assessment program in State B acceptable to State A. As a result, she has not been able to have her driver’s license reinstated in State A or to qualify for a license in State B. She does not own a motor vehicle and does not drive. (Tr. at 23, 27-33; GE 3 at 10-13; GE 4 at 1-2.)

Applicant’s defense attorney in the DWI 10 felony prosecution provided a letter, addressing two factual issues that arose at the DOHA hearing and a legal issue involving Applicant’s refusal to take a breath test to measure her BAC. On the accident, he asserted that the prosecutor could not produce objective evidence to establish that the emergency vehicle that hit Applicant’s car had lights and sirens on. He also wrote that after Applicant’s completion of one year of intensive supervised probation, the charges against her were reduced to one count of misdemeanor DWI. The attorney wrote that a driver’s refusal to take a BAC test in State A is not a criminal offense and is simply addressed by the state department of motor vehicles as a civil administrative matter. In response to the attorney’s assertions, Department Counsel submitted an official document about State’s A laws,

inter alia, on refusals to take BAC tests. The document reflects that a driver's refusal to submit to a BAC test is punishable with a civil penalty of up to \$500 and the revocation of the driver's license for at least one year. (Tr. at 35-37; AN I; AE F at 2.)

SOR ¶ 1.b. January 9, 2016 Arrest. About eight months after the DUI arrest described in SOR ¶ 1.c, below, Applicant was stopped by police in State A at about 11:30 pm for driving 50 MPH in a 30 MPH zone and making an unsafe lane change into oncoming traffic. She failed several field sobriety tests and then refused to take a breath test. The officer wrote in his report that he warned Applicant that her failure to take a breath test would result in her arrest and a separate charge. She understood the consequences of her failure to comply with the officer's instructions and again refused. Applicant signed a form advising her that her refusal to take the breath test would result in the immediate suspension of her driver's license and the subsequent revocation of her license. She was charged with violating State A's law by refusing to take a breath test, DWI – First Offense, and five other charges. The police issued to her a ticket listing her refusal to take a breath test as a traffic infraction, as opposed to a misdemeanor or a felony. Police records state that her attitude at the time of her stop and arrest was "argumentative, combative, and uncooperative." At the DOHA hearing, Applicant claimed she did not recall behaving in this manner with the police. She advised the officer that she only had two drinks, a martini and a beer, prior to driving. The police report states that she advised the police officer that she was driving from her father's residence to her home. (Tr. at 24, 39; GE 3 at 9-10; GE 5 at 1-2, 8, 19.)

At the DOHA hearing, Applicant admitted that she was intoxicated and that she refused to take a breath test. She claimed she was driving to her father's residence after spending time with her then-partner at a bar. She said it was "a very bad night." She further claimed that she thought she had the right to refuse to take the breath test. (Tr. at 21-23, 39-40.)

On June 21, 2016, Applicant pleaded guilty to DUI-First Offense, a misdemeanor. She was sentenced to take an alcohol awareness class, and her driver's license was suspended for six months. She was also required to install an interlock device in her vehicle for six months. On her own initiative, she stopped drinking alcohol for a couple of years. (Tr. at 21-22, 26.)

SOR ¶ 1.c. May 29, 2015 Arrest. At about 4:00 am, Applicant was arrested in State C while on vacation and charged with DUI. The police pulled her over after she stopped her rental vehicle beyond the "stop bar" in an intersection with a red traffic signal. She failed standardized field sobriety tests. Applicant refused to take a breath test. The traffic citation issued to Applicant states that her driver's license was surrendered at the time of the arrest and her driving privileges were suspended for one year due to her refusal to take a breath test. At the DOHA hearing, she claimed that she was "probably" not over the legal limit. On October 27, 2016, she was sentenced to 12 months of probation and fined \$1,000. I take administrative notice of the statutes of State C admitted into the record for that purpose. Under these statutes, a person who refuses to consent to a breath test

to measure his or her BAC is subject to additional criminal penalties, depending on the individual's prior history of refusing a breath test. (Tr, at 19-20; GE 3 at 6; GE 6 at 1-2; AN II, AN III.)

Paragraph 2, Guideline J (Criminal Conduct)

Under this guideline, the Government has cross-alleged the three allegations set forth above under Guideline G. See findings under subparagraphs 1.a, 1.b, and 1.c, above.

Mitigation

With respect to her current alcohol consumption, Applicant claims that alcohol is not really a part of her life. She last had a drink a month prior to the DOHA hearing. She described her drinking as very infrequent. She was never required by the court or her probation officer to attend AA and never felt a need to do so. She admitted it has taken awhile for her to learn that she cannot drive a car after drinking alcohol. She testified that she understands alcohol consumption has led her to make bad decisions with serious consequences. She submitted an alcohol assessment, dated February 20, 2025, completed in State C. The assessment concluded that she met the criteria for Alcohol Use Disorder with no diagnosis. The counselor noted that Applicant has completed an alcohol and drug education program with a state certified program and that she "takes full responsibility for her behavior." In his Substance Use Risk Evaluation, the counselor provided no response to a question asking about details of prior driving arrests or other criminal records. He also provided a code that indicated she had "no priors." (Tr. at 32-33; AE G.)

Applicant argues that she has had "a really positive career" with her company. She has received excellent reviews from her supervisors and has strong working relationships with her co-workers. She has been awarded several promotions, most recently to a manager position about one year ago. (Tr. at 17-18.)

A co-worker of Applicant testified as a character witness. He has worked for Applicant's employer for a number of years, initially in State A with Applicant until he relocated in 2019 to another company facility. He now works with her again on the same team, though in a different state. He praised her trustworthiness and judgment. He has limited knowledge of her 2021 DWI and accident and no awareness of her 2016 and 2015 alcohol-related arrests. (Tr. at 42-51.)

After the hearing, Applicant submitted two character references. A longtime, personal friend wrote enthusiastically about Applicant's professional reliability and "exceptional commitment to her professional development." The other reference is a co-worker who has known Applicant since they both started working for their employer in 2017. The second writer praised Applicant's "diligent work ethic and sense of detail." Neither reference made any comments suggesting familiarity with Applicant's history of

three arrests for driving while intoxicated. The record evidence about her current alcohol consumption is quite limited. (AE B; AE G.)

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, "Any 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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, "Any 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

Paragraph 1, Guideline G (Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 describes seven conditions that could raise security concerns. The following two conditions have possible application to the facts of this case and may be disqualifying:

- (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's consumption of alcohol raises security concerns under the above potentially disqualifying conditions. Her three DWI arrests evidence a history of habitual or binge consumption of alcohol to the point of impaired judgment. She has been assessed as having an Alcohol Use Disorder, and significantly, she continues to consume alcohol, even with her pending security clearance application, which was preliminarily denied by DCSA due to her alcohol consumption. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by her alcohol consumption. AG ¶ 23 sets forth the following four mitigating conditions under Guideline G:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such 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 have been established. Insufficient time has passed since Applicant's last arrest in October 2021. It cannot be concluded that her excessive drinking will not recur. Almost six years passed after her second arrest for DWI when she was again driving after excessive drinking. Since she continues to consume alcohol, the passage of time since her last arrest for DWI is not persuasive evidence that she will not drink alcohol irresponsibly and in such a way as to affect her judgment in the future. She has not provided any evidence that she is participating in counseling or a treatment program. Based upon the record evidence, doubts remain as to her current reliability, trustworthiness, and judgment.

Paragraph 2, Guideline J (Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

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 four conditions that could raise security concerns. The following two conditions have possible application to the facts of this case and may be disqualifying:

(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; and

(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.

Applicant's significant history of criminal behavior establishes the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to rebut, extenuate, or mitigate the security concerns raised by her criminal conduct.

AG ¶ 32 sets out four mitigating conditions under Guideline J. The following two conditions have possible application to the facts 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 mitigating condition has been established. Applicant's last arrest was in October 2021. She has not had a driver's license since that arrest and has had no opportunity to show that she can avoid future criminal conduct when she drinks alcohol. Accordingly, it cannot be concluded, based solely upon the passage of time, that similar criminal conduct will not recur. The fact that her most recent arrest occurred in the context of a vehicular accident evidences the risk to the public she has posed by her criminal conduct. Her behavior casts doubt on her reliability, trustworthiness, and judgment. Applicant's excellent employment record and her successful completion of supervised probation is some evidence of rehabilitation. However, she was motivated to comply with the terms of her sentence and probation so that she could avoid a prosecution on a felony charge and the risk of imprisonment. The educational classes she has taken were all ordered by the judicial system. She presented no evidence of actions she has taken on her own to establish that her criminal behavior is truly in the past. Her praiseworthy employment record alone is insufficient evidence of rehabilitation to permit a conclusion of "success."

Whole-Person Concept

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

Under 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 guidelines and the whole-person concept.

I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given consideration to Applicant's solid employment record, her obvious intelligence, and her strong motivation to continue on a path of professional advancement. The record evidence, however, does not present an individual who has voluntarily reached out to available resources to help her avoid future problems with her alcohol consumption. Her history with alcohol demonstrates the future risk of impaired judgment that can lead to criminal behavior and may create a threat to national security. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

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 G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Paragraph 2, Guideline J	AGAINST APPLICANT
Subparagraph 2.a:	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 national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge