



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



In the matter of:)
)
) ISCR Case No. 24-00502
)
Applicant for Security Clearance)

Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: Allen Edmunds, Esq.

05/06/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, Applicant mitigated alcohol consumption concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On July 29, 2024, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudications Service (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the alcohol consumption and personal conduct guidelines the DSCA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on July 30, 2024, and requested a hearing. The case was assigned to me on December 5, 2024. A hearing was scheduled for January 14, 2025, by Teams Conference Services and was convened as scheduled. At the hearing, the Government's case consisted of six exhibits (GEs 1-6) that were admitted without objection. Applicant relied on his own testimony and nine exhibits (AEs A-I) that were admitted without objection. The transcript (Tr.) was received on January 28, 2025.

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) was charged in May 2013 under Article 134 of the UCMJ for drunk and disorderly conduct and convicted of the same; (b) was charged in May 2013 with a separate alcohol-related offense with Driving Under the Influence (DUI), was convicted, and sentenced to 30 days of house arrest and one year of probation, followed by a charged probation violation in June 2014 and guilty adjudication; (c) was charged in December 2016 with Aggravated Driving While Under the Influence (ADWUI) with a blood-alcohol content (BAC) of .16 per cent or More; (d) was arrested in Japan in August 2017 for a charge believed to have been public intoxication after consuming alcohol and walking down a public street naked, after which he was barred from his military base and returned to the United States; and (e) was charged in November 2018 with Driving While Under the Influence (DWI) and placed in a pre-trial diversion program for one year.

Under Guideline E, (a) Applicant's arrests and charges covered by SOR ¶ 1.a were cross-alleged under Guideline E and (b) Applicant was charged in June 2011 with Hit and run-Vehicle-Property after he hit two brick pillars on his way home at approximately 3:00 AM and subsequently granted a civil compromise with dismissed charges.

In his response to the SOR, Applicant admitted all of the allegations covered by the SOR. He added no explanations or clarifications.

Findings of Fact

Applicant is a 33-year-old civilian employee of a defense contractor who seeks to retain his security clearance. (GE 1; Tr. 15) The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (GE 1) He attended high school classes between September 2006 and June 2009 and earned a high school diploma in June 2009. (GE 1; Tr. 16) He enlisted in the Air Force in January 2012 and served 32 months of active duty. (GE 1 and AEs C-D) Applicant received an honorable discharge in September 2014.

Since April 2018, Applicant has been employed by his current employer as an aircraft mechanic. (GEs 1 and 3 and AE D; Tr. 16, 31) Previously, he worked for other employers in various jobs (mostly as an aircraft mechanic). (GE 1; Tr. 28-29) Applicant

has held a security clearance since 2012. (GE 1; Tr. 17) He is presently sponsored for a security clearance by his current employer. (GE 1; Tr. 17, 31)

Applicant's Alcohol History

Applicant was raised by his grandmother after his father abandoned him and his mother at the age of 12. (GE 7) Thereafter, he was transferred to his mother's care. (Tr. 20) Following a brief stay with his mother, Applicant was transferred to a foster care home, where he spent the ensuing five years (i.e., age 13 through age 18) He was introduced to alcohol during his Air Force enlistment and practiced regular drinking on weekends. (GE 7; Tr. 19, 21-23) His drinking partners consisted of his fellow active-duty enlistees. (Tr. 19)

Between May 2013 and November 2018, Applicant was involved in five separate alcohol-related incidents. (GEs 1-7) In May 2013, he was charged under Article 134 of the Uniform Code of Military Justice (UCMJ) with drunk and disorderly conduct stemming from a bout of drinking in an off-base tavern. He was convicted and received command-imposed punishment of reduction in rank and 45 days of extra duty. (GEs 2-3 and 7; Tr. 32-33)

In a separate alcohol-related related incident in May 2013, Applicant was civilly charged with DUI after being stopped by police and administered a breathalyzer test. (registering a .2 percent BAC reading) Prior to his arrest, he had consumed 20 to 30 beers within the space of two hours. (Tr. 33-34) Appearing in court to answer the charges, he was convicted of the DUI offense and sentenced to 30 days of house arrest, fined \$500, ordered to attend group counseling, had his driver's license suspended for six months, and was placed on probation for a year. (GEs 2-3 and 7; Tr. 35)

Applicant assured that he successfully completed all of the terms of his 2013 sentence and probation and denied any knowledge of an alleged probation violation in June 2014. (GE s 2-3; and 7; Tr. 35-36) While law enforcement records do confirm a police stop of Applicant for a probation violation, the compiled administrative record contains no documented disposition of a probation violation charge arising out of Applicant's May 2013 DUI disposition. (GEs 2-3)

Records document Applicant's arrest and charge in December 2016 for ADWI after recording a BAC percentage of 0.16 or more. (GEs 1-3 and 7; Tr. 35-36) Prior to his arrest, he had consumed eight to ten pints of draft craft beer in a restaurant over a three-to-four-hour period and subsequently recorded a 0.16 BAC percentage before his arrest. (GE 7; Tr. 36-39) In court, his case was dismissed for reported lack of evidence. (GE 6 and AE B)

Records further document Applicant's arrest in Japan in August 2017 for public intoxication following his reported consumption of multiple alcoholic beverages in a local bar located in a foreign country before stripping down naked in public. (GEs 1 and 7; Tr. 41-42) While he was never charged by foreign authorities with an alcohol-related

offense, he was subsequently barred by US. Military authorities from the foreign military base where he had been working as a civilian and returned to the United States.

In his most recent alcohol-related incident in November 2018, Applicant was charged with DWI and placed in a pre-trial diversion program in lieu of the entry of formal judgment. (GEs 5 and 7) The program consisted of one year's probation, community service, a fine, and Alcohol Anonymous (AA) meetings. (GEs 5 and 7 and AE A; Tr. 45-47) Documented are his AA attendance meetings that confirm his attendance of 17 AA mixed meetings (i.e., men and women) between December 2019 and April 2020. (AE A)

Topics covered in his AA meetings included perceptions, symptoms of alcohol abuse, and work on AA steps. (AE A; Tr. 55-56) After completing his AA meeting requirements and satisfying the other conditions of his pre-trial diversion program, Applicant's case was dismissed by the court in November 2020. (GE 7 and AE B)

After completing the 17 AA meetings required of him in his 2018 pre-trial diversion program, Applicant continued his participation in AA meetings for another two years before ceasing his AA meeting attendance and shifting his reliance on his church for continued support in maintaining his responsible drinking practice. (GE 7; Tr. 46-47) Applicant has not incurred any alcohol-related offenses since his last such reported incident in November 2018. (Tr. 52-53)

When interviewed by an investigator from the Office of Personnel Management (OPM) in a personal subject interview (PSI) conducted in 2022, Applicant told the investigator that he considers himself a light drinker of alcohol. (GE 7) He described his typical alcohol intake, which consisted of a twelve pack of seltzer on the weekends, six each night, typically at home when playing video games on Friday and Saturday nights. (GE 7) Asked to explain his attraction to alcohol, he told the investigator in his PSI that while he enjoys the taste of alcohol, and has no intention of abstaining, he is responsible when he drinks, knows his limitations, and does not consume any shots of liquor. (GE 7)

Pressed for more information at hearing about his drinking patterns, Applicant averred that he has continued to drink in moderation only (typically four 12 oz bottles of beer twice a month). (Tr. 55-56). He has never been professionally counseled about his alcohol use and has never been diagnosed for any form of alcohol use disorder or alcohol dependence. (Tr. 56) Applicant's last consumption of alcohol occurred in March 2025 (shortly before his hearing) while attending a funeral. (Tr. 53-54, 61)

Besides his five-alcohol-related incidents, Applicant was involved in a separate offense (albeit non-alcohol-related) in June 2011 with a Hit and Run-Vehicle-Property arrest and charge. The arrest and charge followed an incident in which he hit two brick pillars after falling asleep on his way home at approximately 3:00 AM. (GE 7) Appearing in court, he was granted a civil compromise by the court. In turn, the charges were dismissed. (GE 7)

Endorsements

Applicant is well-regarded by his former team leads, direct line supervisor, and coworkers, who have worked with him and are familiar with his work performance and alcohol history. (AEs D-H) All of his included references credit him with proven maturity, reliability, and trustworthiness.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AGs). These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AGs take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information.

The AGs include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual AGs are pertinent herein:

Alcohol Consumption

The 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. . . . AG ¶ 21.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, and trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes AG ¶ 15.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The burden of disproving a disqualifying condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s multiple years of alcohol-related incidents that occurred between 2013 and 2018. Additional concerns are raised over charges covering Applicant’s non-alcohol-related hit and run incident in 2011.

Alcohol Consumption concerns

On the strength of the evidence documented in the record, two disqualifying conditions (DCs) of the alcohol consumption guideline apply. DCs ¶¶ 22(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 abuse disorder,” and “22(c), “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol abuse disorder,” are both applicable to the facts of record in Applicant’s case.

Since his last DUI offense in 2018, Applicant has moderated his drinking to responsible levels and has neither incurred an alcohol-related arrest or charge nor been diagnosed with an alcohol abuse or dependence disorder. Based on the evidence presented, Applicant may take advantage of several mitigating conditions MCs. MCs ¶¶ 23(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 23(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,” apply to Applicant’s situation in this case.

Based on the composite of demonstrated corrective actions taken by Applicant over the past six years to curtail and avoid incidents that manifest alcohol abuse, he can be credited with making considerable progress in the management of his alcohol consumption. Applicant's commitment to maintaining responsible levels of drinking over the past six years is encouraging and reflective of his increased maturity and understanding of the risks and dangers of alcohol abuse and drinking and driving in general.

Personal Conduct

Cross-alleged and incorporated under Guideline E are the allegations associated with his arrests and charges covered by Guideline G. Applicable to Applicant's case under Guideline E DC ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . (3) a pattern of dishonesty or rule violations . . ."

Applicant's cross-alleged alcohol-related offenses are entitled to mitigation credit for the same reasons covered by Guideline G considerations. Applicant's non-alcohol-related hit and run incident is both isolated and dated. With his increased maturity and understanding of risks associated with unsafe driving the likelihood of a recurrent incident in the foreseeable future is low on the probability scale. Applicable to Applicant's situation is MC ¶ 17 (c), "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment."

Whole-person Assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of recurrent alcohol-related incidents is incompatible with his holding a security clearance. Since his last admitted DUI incident in November 2018, he has demonstrated increased maturity and understanding of the risks associated with drinking and driving on public highways. While he has never been diagnosed with an alcohol abuse disorder, he has reduced his current drinking to responsible levels and has exhibited no signs of recurrent alcohol abuse. He deserves considerable credit as well for his contributions to the defense industry. Based on the evidence presented, he has made sufficient progress in averting both alcohol-related and non-alcohol-related incidents to draw favorable inferences on his ability to avoid judgment lapses in the future involving alcohol-related incidents and other driving risks associated with the use of the public highways in his state.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude alcohol consumption and personal conduct concerns are mitigated. Eligibility for access to classified information is granted.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT

Subparagraphs 1.a-1-e: For Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subparagraphs 2.a-2.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge