



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



In the matter of:

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ISCR Case No. 24-01031

Applicant for Security Clearance

Appearances

For Government: Brittany White, Esq., Department Counsel

For Applicant: *Pro se*

01/20/2026

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the Guideline G (alcohol consumption) security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On January 1, 2023, Applicant completed an Electronic Questionnaire for Investigations Processing or security clearance application (SCA). On December 27, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; 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.

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set

forth security concerns arising under Guideline G. Applicant responded to the SOR on January 15, 2025 (Answer), and he requested an administrative judge issue a decision based on the administrative record.

On March 17, 2025, Department Counsel submitted a file of relevant material (FORM), which included Government Exhibits (GE) 1 through 5. Pursuant to ¶ E.3.1.13 of the DOD Directive 5220.6, the Government also withdrew SOR ¶ 1.c from the SOR. The FORM was provided to Applicant on March 21, 2025, and he had 30 days to respond to the FORM, file any objections or provide additional information. Applicant did not respond to the Government's FORM or provide any additional records. I admitted into evidence GE 1 through 5, without objection.

Findings of Fact

In Applicant's Answer, he admitted SOR ¶¶ 1.a and 1.b and provided additional explanation. He denied SOR ¶ 1.c, which was subsequently withdrawn by the Government and no longer under consideration. His admissions are accepted as findings of fact.

Applicant is 35 years old. According to his May 2020 SCA, he attended two different colleges between 2008 and 2019. He earned a bachelor's degree in January 2019. However, a review of his June 2023 SCA showed he had never received a college degree. At this time, I am unsure whether he has a college degree due to inconsistent information that has not been addressed or resolved in the FORM. Applicant has never been married and has no children. A federal contractor is sponsoring him for a security clearance. (GE 4, 5)

Alcohol Consumption

SOR ¶ 1.a alleges in about April 2017, Applicant was charged with driving under the influence (DUI). He pled no contest and was sentenced to two days in jail and three years of probation. He was also ordered to pay court fees and fines totaling \$2,018, and he was required to participate in an alcohol education program for three months. In his Answer, Applicant admitted this allegation but clarified that he was accepted into a work release program at a senior citizen center, which kept him out of jail. (GE 1, 2, 3)

SOR ¶ 1.b alleges in about July 2020, Applicant was charged with DUI. At the time of his arrest, his blood alcohol content (BAC) registered .20. He pled no contest to the DUI and was sentence to 30 days in jail and five years of probation. He was ordered to pay court fees and fines totaling about \$2,000, not to visit any places where intoxicants are sold as a primary income or business, not to consume alcohol, and to complete an alcohol awareness program. His driver's license was also revoked for an unspecified period, and later restricted. Applicant was required to install an alcohol interlock device on his car until he completed the alcohol awareness program. Applicant admitted this information in his Answer, but he clarified that the 30-day jail sentence was suspended by the court. (GE 1, 2, 3)

During Applicant's March 2024 background interviews, he stated that both DUI arrests occurred after he made poor decisions believing he was sober enough to drive home safely. He expressed his embarrassment and remorse for being arrested for DUI on two separate occasions. Since his July 2020 arrest, his girlfriend has supported him in controlling his alcohol use and keeping it in moderation. He asserts that he now only drinks during holidays and special occasions. He has never been advised to seek alcohol treatment, nor has he ever been diagnosed with an alcohol disorder. Since making positive changes with his use of alcohol, he has not been involved in any other alcohol-related offenses after July 2020. (GE 2, 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only 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. These guidelines 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 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

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 mitigating 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

Guideline G: 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 conditions that could raise a security concern and may be disqualifying 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; 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.

The record evidence establishes AG ¶¶ 22(a), and 22(c). Applicant was involved in two alcohol-related offenses in 2017 and 2020.

AG ¶ 23 lists two conditions that could mitigate 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; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant was arrested twice for DUI offenses in 2017 and 2020. He acknowledged he was intoxicated both times he was pulled over by the police. Following his second DUI arrest in July 2020, Applicant stated in his Answer that he made positive changes in his lifestyle, with the full support of his girlfriend. He does not believe he has a problem with using alcohol and he continues to consume alcohol in moderation, such as during holidays or on special occasions. He has matured and learned a valuable lesson from his past mistakes. Applicant has not had any alcohol-related offenses, nor any criminal charges filed against him, since his last DUI arrest in July 2020.

AG ¶¶ 23(a) and 23(b) apply. Over five years have passed since Applicant's last DUI arrest in July 2020. He regrets his past irresponsible drinking habits and has made positive changes in his life to prevent alcohol-related misconduct from recurring. Overall, I find Applicant successfully mitigated the alcohol consumption security concerns.

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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall common-sense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline G are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant has taken responsible action to control his excessive use of alcohol that occurred many years ago. He has matured and there is no indication of a recent problem. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the

