



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



In the matter of:)	
)	
)	ISCR Case No. 24-01966
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison P. O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct) and G (Alcohol Consumption). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 3, 2022. On May 12, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J and G. The DCSA acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR in an undated document and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 2, 2025. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on September 12, 2025. The FORM consists of eight items, which I have marked as Government Exhibits (GX) 1 through 8. GX 1 and 2 are the pleadings in the case. GX 3 through 8 are the documentary evidence submitted in support of the allegations in the SOR, and I have admitted them in evidence without objection by Applicant. He submitted a response, which is admitted in evidence as Applicant's Exhibit (AX) A. The case was assigned to me on January 6, 2026.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR. His admissions are incorporated in my findings of fact.

Applicant is a 37-year-old software engineer employed by a defense contractor since June 2021. He received a bachelor's degree in May 2012 and a master's degree in May 2019. He has never married and has no children. He has no military service. He received a security clearance in February 2021.

The SOR alleges three instances of criminal conduct, two of which involved alcohol consumption. The evidence concerning these instances is summarized below.

SOR ¶ 1.a alleges that Applicant was charged with driving under the influence (DUI) in March 2013, was convicted, and was sentenced to five days in jail and three years of probation. His blood-alcohol content (BAC) was .16, double the legal limit. His conviction was set aside in July 2020. (AX A at 7-8) He asserted that it was set aside in accordance with the recommendation of the probation office, based on his meeting all the specific criteria for early termination and his excellent behavior while on probation. (AX A at 3) However, he submitted no documentation from the probation office or elsewhere reflecting the basis for setting aside his conviction.

SOR ¶ 1.b alleges that Applicant was charged with shoplifting a sweater from a clothing store in March 2016. He was convicted of this offense and of violating the probation imposed in March 2013. He was sentenced to three additional years of probation and community service. In his answer to the SOR, he stated that the incident occurred when he was unemployed and experiencing a difficult time financially and emotionally.

SOR ¶ 1.c alleges in June 2022, Applicant was charged with DUI (misdemeanor), failure to stop or respond to police command (felony), and reckless driving (misdemeanor). This incident occurred less than three weeks after he submitted his SCA. In July 2024, he pleaded guilty to DUI (misdemeanor) and failure to stop or respond to police command (misdemeanor). He pleaded not guilty to reckless driving and the charge was dismissed. For the DUI, he was sentenced to five days in jail and probation for two years. For the failure to stop or respond to police command, he was sentenced to an

additional five days in jail and ordered to abstain from alcohol while on probation. He was also ordered to complete a substance abuse evaluation and any treatment deemed necessary. He has provided no evidence that he completed the evaluation or any treatment.

In Applicant's answer to the SOR, he stated that the June 2022 DUI occurred after his dog died, and he consumed alcohol to cope with his emotions. He stated that his failure to respond to police command occurred after the police stopped him but did not approach his vehicle for a long time. He stopped waiting for them to approach him and drove to his nearby apartment, where he was arrested.

In Applicant's response to the SOR, he stated that the probation imposed in July 2024 was terminated early in April 2025, based on the recommendation of the probation office. He did not provide any documentary evidence of a recommendation of the probation office or action of the court terminating the probation. He stated that he has not consumed any alcohol for a year, and that his employer has utilized him as a mentor for new employees and has supported his application to restore his security clearance.

Policies

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant

has not met the strict guidelines the President and the Secretary of Defense 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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

Analysis

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: “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.”

The evidence in the FORM and Applicant’s admissions establish the disqualifying condition in AG ¶ 31(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.”

The following mitigating conditions are potentially relevant:

AG ¶ 32(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

AG ¶ 32(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 is established. Applicant's first DUI was in March 2013, almost 13 years ago. However, it is not mitigated by passage of time because it was followed with additional criminal conduct in March 2016 and June 2022. Even if Applicant's probation was terminated in April 2025, as he has claimed without any supporting documentation, less than year has passed since its termination. He provided no evidence from court officials, probation officers, coworkers, counselors, associates, or supervisors to support his claim of rehabilitation. I am not convinced that he will not revert to his irresponsible behavior if the pressure of regaining his security clearance is removed.

Guideline G, Alcohol Consumption

The concern under this guideline is set out in AG ¶ 21: "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."

Applicant's admission and the evidence in the FORM establish the disqualifying condition in AG ¶ 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 use disorder."

The following mitigating conditions are potentially relevant:

AG ¶ 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;

AG ¶ 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;

AG ¶ 23(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

AG ¶ 23(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.

AG ¶ 23(a) is not established. Less than a year has passed since Applicant completed his probation. He submitted no evidence of counseling or treatment. He submitted no evidence of unusual circumstances making recurrence unlikely.

AG ¶¶ 23(b), 23(c), and 23(d) are not established. Applicant was required by the court to complete a substance abuse evaluation and any treatment deemed necessary. He provided no evidence that he completed the substance abuse evaluation and no evidence of treatment or counseling, either in compliance with the court order or voluntarily obtained. He has been free from the supervision of a probation officer for less than a year. Insufficient time has passed to demonstrate a “clear and established pattern” of modified consumption or abstinence.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the relevant circumstances. An 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.

I have incorporated my comments under Guidelines J and G in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about his claimed rehabilitation. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines J and G and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his alcohol consumption and criminal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline J (Criminal Conduct): AGAINST APPLICANT

 Subparagraphs 1.a-1.c: Against Applicant

Paragraph 2, Guideline G (Alcohol Consumption): AGAINST APPLICANT

 Subparagraph 2.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge