



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



In the matter of:

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 14-01481

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

01/22/2018

---

**Decision**

---

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guidelines G (alcohol consumption) and E (personal conduct). Clearance is granted.

**Statement of the Case**

On November 1, 2013, Applicant submitted a Questionnaire for National Security Positions (SF-86). On December 4, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a statement of reasons (SOR) to Applicant. The action was taken pursuant to Executive Order 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 September 1, 2006.

The SOR alleged security concerns under Guidelines G and E. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with national security to grant a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted or denied.

On January 12, 2016, Applicant responded to the SOR. On February 1, 2017, Department Counsel was prepared to proceed. On February 6, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On March 2, 2017, DOHA issued a notice of the hearing, setting the hearing on March 16, 2017. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered Applicant Exhibit (AE A), which was admitted without objection, and testified on his own behalf. I held the record open until April 28, 2017, to afford Applicant an opportunity to submit additional evidence. Applicant timely submitted AE B through J, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 24, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective “for all covered individuals” on or after June 8, 2017. Accordingly, I have evaluated Applicant’s security clearance eligibility under the new AGs, as required.<sup>1</sup>

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a and 1.e, with explanations; and denied SOR ¶¶ 1.b, 1.c, 1.d, 2.a, 2.b, and 2.c, with explanations. After a thorough review of the record, I make the following findings of fact.

### **Background Information**

Applicant is a 37-year-old database administrator employed by a defense contractor since March 2014. He worked for another defense contractor in the same position and location beginning in September 2012. He seeks a secret security clearance as a condition of his continued employment. (Tr. 13-15, 69; GE 1)

Applicant graduated from high school in March 1979. He attended college and estimates that he has earned about 90 credit hours. Applicant married in May 1999, and has been separated since March 2004. He has a 15-year-old daughter and has an informal child support and visitation arrangement with his wife. Applicant did not serve in the U.S. armed forces. (Tr. 15-17; GE 1)

---

<sup>1</sup> The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

## **Alcohol Consumption**

Applicant has a history of consuming alcohol to excess and to the point of intoxication that goes back to when he was about 20 or 21, when he would periodically become intoxicated about “five percent of the times he drank.” He has decreased to “less than five percent of the times he (drank) since July 2009.” He provided this information during his July 24, 2014 Office of Personnel Management Personal Subject Interview and confirmed it during his testimony. (OPM PSI). (Tr. 35-36; GE 3)

Applicant was arrested two times for driving under the influence (DUI). The first DUI arrest occurred in July 2009. Applicant pled guilty to reckless driving with alcohol, and sentenced to six months of probation, 50 hours of community service, first offender DUI school, and \$150 fine. He completed all sentencing requirements by October 2010. (SOR answer; Tr. 22; GE 2, GE 3, GE 6) The second DUI arrest occurred in October 2014. Contrary to his plea of not guilty, he was convicted of DUI in a jury trial, and sentenced to 12 months of probation, revocation of his driver’s license for one year, vehicle immobilization for 10 days, ignition interlock device for 12 months, 50 hours of community service, first offender DUI school and victim impact panel, and a \$1,300 fine. Applicant completed all of his sentencing requirements and his probation in May 2017. (See SOR and answer and transcript for further details regarding these arrests and disposition; Tr. 42-59, 62-63, 70-72; GE 2) As part of his DUI school, he attended a 12-week group therapy session for substance abuse and was not diagnosed as alcohol dependent or abusing alcohol. (GE 2)

Applicant was also cited for two traffic-related offenses. The first citation was in February 2013 for careless driving and failure to immediately report an accident. He was fined \$270. The second citation was in November 2013 for failure to leave information at an accident. He pled no contest and was fined approximately \$450. (SOR answer; Tr. 22-41; GE 5, GE 7) During his February 24, 2014 OPM PSI, he informed the investigator that he had consumed alcohol before each of these offenses. (Tr. 35-36; GE 3)

Applicant no longer associates with his drinking friends. He believes his association with them puts him in a “really bad position.” (Tr. 29-30) The last time he was intoxicated was the night of his second DUI arrest in October 2014. (GE 2) Applicant submitted a certificate of completion of a substance abuse treatment program dated August 10, 2015. (AE A) Post-hearing, Applicant submitted a favorable drug and alcohol assessment dated April 26, 2017. It was the opinion of the examining licensed mental health counselor that Applicant does not meet any of the criteria for alcohol addiction or dependence or abuse. (AE B)

## **Personal Conduct**

All of the alcohol consumption allegations discussed above were cross-alleged in SOR ¶ 2.a under this concern. No new facts or evidence were presented with regard to SOR ¶ 2.a.

SOR ¶ 2.b alleges that Applicant falsified his answer on his November 1, 2013 SF-86 when asked if he had been issued a summons, citation, or ticket to appear in court in a criminal proceedings in the last seven years. The SF-86 instructions stated not to check if the citation involved traffic infractions where the fine was less than \$300 and did not include alcohol or drugs. With these instructions, Applicant listed his July 2009 DUI, but did not list his February 2013 careless driving and failure to report immediately an accident. As noted, the fine for his citations was \$270 and not the \$300 alleged, and the citation itself did not cite involvement with alcohol. (SOR answer; Tr. 32-40)

SOR ¶ 2.c. alleges that Applicant falsified his answer on his November 1, 2013 SF-86 when asked he had illegally used any drugs or controlled substances in the last seven years. Applicant answered “Yes” and listed a one-time marijuana use in April 2009. During his February 24, 2014 OPM PSI, he “openly admitted” to the investigator that he had used marijuana at least six times, but no more than 12 times during the timeframe of 2006 to 2012. He explained that he listed April 2009 as “an arbitrary date.” In his SOR answer, he stated that he did not have an intent to falsify his SF-86 and did not know exactly how many times he used marijuana or the exact dates of use. Applicant credibly testified on this point when completing his SF-86 and listed a “placeholder” use and date. (Tr. 64-68) Applicant’s testimony is corroborated by his supervisor’s statement, a retired Air Force master sergeant with a security forces background. (SOR answer)

## **Character Evidence**

Applicant submitted eight character references, who vouched for his trustworthiness and good character. These individuals are familiar with Applicant’s alcohol-related arrests, are aware of his contribution to the national defense, know him well as a member of the community, and have no reservations in supporting him for a security clearance. These references include his community service supervisor, his probation officer, a career civil servant and father of one of his childhood friends and co-worker, three neighbors, and two long-time friends. (AE B – J)

## **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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, 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 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*, 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 (4<sup>th</sup> 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 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**

### **Alcohol Consumption**

Under Guideline G (alcohol consumption), the Government's concern is that 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.

The Government established its case under Guideline G through Applicant's admissions and evidence presented. A review of the evidence supports application of two alcohol consumption disqualifying conditions, 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;" and AG ¶ 22(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder."

Considering the totality of the circumstances in this case, I find application of two alcohol consumption mitigating conditions is appropriate:

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 good judgment; and

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.

Applicant presented credible evidence of actions taken to overcome his alcohol-related arrests, has established that he is not alcohol dependent, and during the infrequent times he consumes alcohol, he does so responsibly. His reference letters demonstrate that Applicant's work behavior has not been indicative of his having an alcohol problem. He is a valued employee, who is reliable, dependable, professional, and is a respected member of the community. His responsible use of alcohol is supported by his own credible testimony and evidence presented. At his hearing, Applicant acknowledged the problems misuse of alcohol has caused him, demonstrated remorse, and a steadfast commitment to continue lifestyle changes consistent with responsible use of alcohol.

## **Personal Conduct**

The conduct under alcohol consumption was cross-alleged under personal conduct without the addition of any additional facts or allegations. Given the fact these allegations were fully discussed and dealt with under alcohol consumption, it is unnecessary to discuss further under personal conduct.

With regard to the falsification allegations, the first allegation for failure to list his February 2013 citation for careless driving and failure to report immediately an accident proved to be incorrect. A review of the evidence indicates that Applicant's fine for this traffic-related infraction was \$270, not \$300 as alleged. As noted, the SF-86 instructions directed applicants not to check if the citations involved a fine that was less than \$300 and did not include alcohol or drugs. Moreover, he clearly was not trying to hide his past alcohol-related arrests, as he disclosed his 2009 DUI arrest alleged in SOR ¶ 1.e.

The second allegation alleges that Applicant deliberately falsified his SF-86 by failing to list more than the one marijuana use in April 2009. Applicant credibly testified, testimony that was corroborated by his supervisor, that he was unsure of the number of times and dates he used marijuana when he listed the 2009 single use as a "placeholder." When queried during his OPM PSI, he readily acknowledged his marijuana use, at least to the extent he could remember. I find that Applicant put the Government on notice of his past drug use, albeit later refined, and that there was no attempt on his part to deliberately falsify his SF-86. Further discussion of disqualifying and mitigating conditions under this concern is not warranted.

## **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) 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. The discussion in the Analysis section under Guidelines G and E is incorporated in this whole-person section. However further comments are warranted.

I was particularly impressed with Applicant's demeanor during his hearing and the apparent effect this process has had on him. Applicant has been willing to do whatever is necessary to recover from his alcohol-related arrests. The process has been costly for him, not only financially, but also personally and professionally. Applicant is contributing to the defense industry and is well regarded by his supervisor. His reference letters provide insight regarding his role in the community and how his co-workers, neighbors, and friends favorably view him. He demonstrated the correct attitude and commitment to responsible alcohol consumption.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the security concerns raised. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole-person factors" and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

### **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: FOR APPLICANT

Subparagraphs 1.a – 1.e: For Applicant

Paragraph 2, Guideline E: FOR Applicant

Subparagraphs 2.a – 2.c: For Applicant

### **Conclusion**

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

---

ROBERT TUIDER  
Administrative Judge