



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04327

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

10/22/2018

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**Decision**

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HARVEY, Mark, Administrative Judge:

Applicant had six arrests or apprehensions for alcohol-related driving offenses from 1986 to April 2015. He made some positive steps towards rehabilitation; however, security concerns under Guideline G (alcohol consumption) are not mitigated. Guideline E (personal conduct) security concerns duplicate Guideline G security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 11, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On March 5, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and 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 set forth security concerns arising under Guidelines G and E. (Hearing Exhibit (HE) 2)

On March 19, 2018, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On April 30, 2018, Department Counsel was ready to proceed. On

August 3, 2018, the case was assigned to me. On August 21, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 10, 2018. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and place of his hearing. (Transcript (Tr.) 14-15) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered eight exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 17-21; GE 1-6; Applicant Exhibit (AE) A) Applicant expressed his concern that the Government was alleging he made a false statement about his alcohol consumption, and Department Counsel assured him that there was no such allegation. (Tr. 18-20) The Guideline E concern relates to his alleged failure to follow rules and judgment issues directly related to his alcohol consumption, and the SOR does not allege a lack of integrity or false statements. (Tr. 18-20) On September 19, 2018, DOHA received a copy of the hearing transcript.

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, he admitted SOR ¶¶ 1.a through 1.h. (HE 3) He denied SOR ¶ 2.a. He also provided mitigating information. (HE 3)

Applicant is 53 years old, and a government contractor is sponsoring him for a security clearance to enable him to work in communications security. (Tr. 7, 10; GE 1) In 1983, Applicant graduated from high school. (Tr. 7) In 2016, he was awarded a bachelor of science degree. (Tr. 8)

Applicant served in the Air Force from 1983 to 2008, and he honorably retired as a master sergeant (E-7). (Tr. 8) His specialty was communications operator. (Tr. 9) In March 1988, he married, and his three children are ages 26, 29, and 35. (Tr. 9)

### **Alcohol Consumption<sup>2</sup>**

Applicant began consuming alcohol when he was 15 years old and first drank to intoxication when he was 16 years old. (GE 5) In the mid-1980s, he consumed a fifth of scotch and a six pack of beer per week. (GE 5) The most he consumed in a 24-hour period was a fifth and a half of scotch. (GE 5)

In July 1986, Applicant was apprehended at the gate of an Air Force base for drunk driving. (Tr. 29; GE 3) The police gave him a breathalyzer test, and his blood-alcohol content (BAC) was .26. (GE 5) Pursuant to Article 15, Uniform Code of Military Justice (UCMJ), Applicant's commander determined he committed the offense of drunk driving, and he imposed a reduction from airman first class to airman (suspended), forfeiture of

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<sup>1</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>2</sup> Unless stated otherwise, the source for the facts in this section is Applicant's response to the statement of reasons. (HE 3)

\$362 pay per month for two months, correctional custody for 30 days, and a reprimand. (GE 3) Custody in excess of 16 days was remitted. (GE 3) He successfully completed a six-week alcohol-rehabilitation program. (GE 3)

In October 1988, Applicant was arrested for driving under the influence of alcohol (DUI). (GE 6) His BAC was .24. (GE 6) He pleaded guilty and was convicted of DUI. (Tr. 29; GE 5) He received a fine of \$268; his driver's license was suspended for three months off base and for one year on base; and he received a reprimand. (GE 6) In January and February 1989, Applicant received 30 days of inpatient alcohol treatment at an Air Force base, and he attended Alcoholics Anonymous (AA) meetings five times a week. (GE 5) He successfully completed the alcohol-treatment program and was diagnosed with Alcohol Abuse in remission. (GE 5) Abstinence from alcohol consumption and continued AA attendance were specified as his goals. (GE 5)

In September 1997, Applicant was apprehended for drunk driving on an Air Force base. His BAC was .24 or .25.<sup>3</sup> Pursuant to Article 15, UCMJ, his commander determined he committed the drunk driving offense, and he received nonjudicial punishment of forfeiture of \$500; and he lost his on-base driving privileges for one year. He attended an Air Force alcohol-counseling program once a month for one year and AA meetings two or three times a week. He was required to refrain from alcohol consumption for one year, and he successfully completed the Air Force alcohol-counseling program.

In December 2000, Applicant was arrested for DUI. (Tr. 30) He was charged with DUI in January 2001. (GE 2) He never went to court for the December 2000 DUI. (Tr. 29-30; GE 6)

In Applicant's 2003 sworn statement, he did not mention the DUI in December 2000. See n. 3 *supra*. He said, "I am incredibly fortunate to be in the USAF with three DUI arrests. There is no doubt in my mind that I would be immediately discharged from the Air Force if I had another alcohol related arrest. I do not want to jeopardize my military career." (GE 7 at 5) He also said, "I have no plans to start drinking again, but I take it one day at a time. I am motivated to be a non-drinker because of my participation in the church."

In June 2013, the police stopped Applicant and gave him a breathalyzer. (GE 8) His BAC was .15 (GE 8) Applicant was convicted of driving while intoxicated (DWI). (Tr. 31)<sup>4</sup> He completed the court-ordered substance abuse counseling. (Tr. 27)

In April 2015, Applicant was charged with DUI and refusal. He was convicted of DUI but not refusal. (Tr. 31-32; GE 8) He was sentenced to three years of unsupervised

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<sup>3</sup> Unless stated otherwise, the information in this paragraph is from a sworn statement Applicant made to a Defense Security Service investigator on September 12, 2003. (GE 7)

<sup>4</sup> Applicant disclosed his DUI in 2013 and his DUI in 2015 on his December 11, 2015 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) I am not considering Applicant's failure to provide accurate information to investigators or on his SCA against him in the disposition of his security clearance.

probation and court-ordered substance-abuse counseling. He completed the required substance-abuse counseling and successfully completed probation. (Tr. 26, 33) A copy of the document listing his conditions of probation was not included in the record.

Applicant was diagnosed with substance abuse. He received outpatient alcohol counseling and treatment from December 2015 to June 2016, and he attended 51 AA meetings. (Tr. 26, 34-35; AE A) His June 20, 2016 alcohol-treatment final report states Applicant “has successfully completed this [treatment] process and committed to total abstinence.” (AE A) He stopped going to AA meetings, and he decided to seek support for his abstinence from alcohol consumption from his church. (Tr. 35)

Applicant did not consume alcohol from 1993 to 1997. (Tr. 25) He stopped drinking alcohol from April 2015 to August 2016. (Tr. 33-34) He resumed his alcohol consumption shortly after completing substance abuse counseling in June 2016. (Tr. 34; GE 8) He acknowledged that he is an alcoholic. (Tr. 24) Applicant said he ended his alcohol consumption on September 1, 2017. (Tr. 23) His spouse keeps wine in his home, and she mostly consumes wine when she chooses to drink alcohol. (Tr. 27-28)

### **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 DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the applicant's personal or professional history that may disqualify the applicant for eligibility 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 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. Sept. 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**

AG ¶ 21 articulates the Government's 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 lists seven conditions that could raise a security concern and may be disqualifying in this case including:

- (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;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed;

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(a) and 22(c) apply. Applicant's six alcohol-related driving incidents involving the police and/or the courts occurred from 1986 to April 2015. His BAC for the first three alcohol-related driving offenses ranged from .24 to .26. His BACs at .24 and above establish that he engaged in binge alcohol consumption to the extent of impaired judgment.<sup>5</sup>

AG ¶ 23 details conditions that could mitigate security concerns including:

(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;

(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

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<sup>5</sup> "Binge drinking is the most common pattern of excessive alcohol use in the United States." See the Center for Disease Control website, (stating "The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours."), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>. There are other definitions of "binge alcohol consumption" that involve different alcohol-consumption amounts and patterns.

pattern of modified consumption or abstinence in accordance with treatment recommendations.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). See *also* ISCR Case No. 08-04232 (App. Bd. Oct. 9, 2009) (affirming denial of security clearance for Applicant with alcohol-related criminal offenses for six years prior to hearing). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption and Applicant's history of alcohol consumption. Applicant presented some evidence supporting mitigation of alcohol consumption concerns. In 1989, Applicant received 30 days of inpatient alcohol treatment at an Air Force base; he successfully completed the alcohol treatment program; and he was diagnosed with Alcohol Abuse in remission. He had periods of abstinence as long as four years from the age of 15 to age 51. He said he ended his alcohol consumption 12 months before his hearing. He has not had any alcohol-related incidents involving the police or courts since April 2015.

Several factors weigh against mitigation of alcohol consumption security concerns: (1) Applicant's six alcohol-related driving offenses; (2) his reluctance to permanently forswear his alcohol consumption; (3) his binge alcohol consumption to the extent of .24 to .26 BACs for his first three alcohol-related driving offenses; (4) his diagnosis of alcohol abuse; and (5) his resumption of alcohol consumption after previous periods of abstinence for up to four years. I have lingering doubts and concerns about Applicant's current reliability, trustworthiness, and good judgment pertaining to his history of alcohol consumption. Alcohol consumption security concerns are not mitigated.

## Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, 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 ¶ 16 describes three conditions that could raise a security concern and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

(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: (1) untrustworthy or unreliable behavior . . . ; (3) a pattern of . . . rule violations; and

(e) personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

All of Applicant's conduct causing a security concern in SOR ¶ 2.a is explicitly covered under Guideline G, and that conduct is sufficient to warrant revocation of his security clearance under Guideline G. AG ¶¶ 16(c) and 16(d) do not apply. Applicant's involvement with excessive alcohol consumption and driving offenses affects his professional and community standing. However, this conduct does not create a vulnerability to exploitation, manipulation, or duress because security and law enforcement officials are aware of it. AG ¶ 16(e) is not established. Guidelines G and E address identical issues involving judgment, trustworthiness, and reliability. Guideline E concerns constitute a duplication of the concerns under Guideline G, and accordingly, personal conduct security concerns in SOR ¶ 2.a are found for Applicant.



## 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 commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. "In evaluating an applicant's case, a Judge must carefully consider the record as a whole. This includes not only considering the extent to which an applicant's circumstances raise concerns about his or her reliability but also giving fair consideration of the applicant's mitigating evidence." ISCR Case No. 12-09900 at 3 (App. Bd. Dec. 7, 2016) (citing ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016)). My comments under Guidelines G and E 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 is 53 years old, and a government contractor is sponsoring him for a security clearance to enable him to work in communications security. In 2016, he was awarded a bachelor of science degree. He served in the Air Force from 1983 to 2008, and he honorably retired as a master sergeant. His specialty was communications operator. I have credited Applicant with mitigating SOR ¶ 1.h, which alleges attendance at an alcohol outpatient treatment program from December 2015 to June 2016 because this is mitigating information. SOR ¶ 2.a is a duplication of the alcohol consumption security concerns alleged in SOR ¶¶ 1.a through 1.g.

The evidence weighs against grant of access to classified information: (1) Applicant's six alcohol-related driving offenses involving the police, command discipline under Article 15, UCMJ, and/or courts in 1986, 1988, 1997, 2000, 2013, and 2015; (2) his reluctance to permanently forswear continued alcohol consumption; (3) his binge alcohol consumption to the extent of .24 to .26 BACs for his first three alcohol-relating driving offenses, and a .15 BAC for his DUI in 2013; (4) his diagnosis of alcohol abuse; (5) his resumption of alcohol consumption after completion of a therapy program in June 2016; (6) his failure to follow treatment recommendations of abstinence from alcohol consumption; and (7) his most recent relatively brief period of abstinence of one year. It is difficult to rule out alcohol-related judgment errors in the future, and his lengthy history

of alcohol consumption raises ongoing questions about his reliability and trustworthiness. See AG ¶ 21.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that G security concerns are not mitigated, and Guideline E security concerns are mitigated as a duplication of the concerns under Guideline G. It is not clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility at this time.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARK HARVEY  
Administrative Judge