



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



In the matter of:

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

03/07/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate alcohol consumption, criminal conduct, and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On July 29, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the alcohol consumption, criminal conduct, and personal conduct guidelines the DCSA 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 in 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 heard as scheduled. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on his testimony and no exhibits. The transcript (Tr.) was received on January 28, 2025

Procedural issues

Before the close of the hearing, Department Counsel moved to amend the SOR to add an allegation to conform with the evidence under Guideline E of deliberate omission of Applicant's admitted November 2021 alcohol-related incident to the evaluating licensed psychologist retained by DOHA. (Tr. 74-76) Applicant interposed no objections to Department Counsel's motion, and the motion was granted. Department Counsel's requested amendment was entered as subparagraph 3.c of Guideline E.

Prior to the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with a certificate of completion of an alcohol assessment class. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded one day to respond. Within the time permitted, Applicant supplemented the record with a certificate of alcohol assessment completion, dated January 2021 (over 10 months predating his November 2021 DUI incident). Applicant's post-hearing submission was admitted without objection from Department Counsel (noting only the pre-November 2021 timing of the certificate) as Applicant's Exhibit A (AE A)

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) became so intoxicated that paramedics had to transport him to a hospital, where he was admitted; (b) was arrested and charged with DUI in December 2017; (c) became so intoxicated that paramedics had to transport him to a hospital, where he was admitted; (d) was arrested and charged with DUI in November 2021; and (e) was evaluated by a licensed psychologist in June 2023 who opined that his reliability and trustworthiness were questionable given his history of excessive alcohol consumption, without diagnosing him with a substance abuse disorder. The SOR ¶¶ 1.a and 1.d allegations covered by Guideline G were cross-alleged under Guideline J.

Under Guideline E, Applicant allegedly was fired from his manager position for violating his company's fraternization rules by engaging in a romantic relationship with a subordinate employee he supervised. Additionally, those alcohol-related allegations covered by Guideline G, were cross-alleged under Guideline E.

In his response to the SOR, Applicant admitted most of the allegations with explanations and clarifications. He denied the allegations of being unreliable and untrustworthy, claiming he gave the evaluating licensed psychologist any and all

information he required up front. He further claimed that he spoke multiple times over the phone and even over video chat for a more personal setting.

Findings of Fact

Applicant is a 28-year-old civilian employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has cohabited with another since August 2018. (GE 1) He earned a high school diploma in June 2014 and attended college classes between August 2014 and April 2020 without earning a degree or diploma. (GE 1) Applicant reported no military service.

Since March 2020, Applicant has been employed by his current employer as a material coordinator. (GEs 1-2) Previously, he worked for other employers in various jobs. He is currently sponsored for a security clearance by his current employer but has never held a security clearance.

Applicant's alcohol history

Applicant was introduced to alcohol at the age of 21. Between June 2017 and November 2021, he was involved in four alcohol-related incidents. (GEs 2-3) While with friends in June 2017, he and his friends were engaged in a night of bar hopping while celebrating his former girlfriend's birthday. (GE 2) At one point in the evening, he separated from his friends and was found sitting at a curb by local police. (GE 2; Tr. 36) Police had him transported to a local hospital, where he was treated for over consumption of alcohol. While evaluated for possible drug-ingestion in the alcohol he consumed, his medical records produced no positive indicators of drug use. (GE 2; Tr. 40-41) Following his outpatient testing and treatment, he was released. (Tr. 36-38)

Applicant continued to abuse alcohol following his June 2017 outpatient admission and was arrested and charged with DUI in December 2017. (GEs 2-4; Tr. 39-40) The arresting officer found Applicant asleep in his vehicle with the engine running. (GE 4) After administering a field sobriety test, the investigating officer at the scene arrested Applicant on suspicion of driving under the influence and transferred him to a local officer. (GE 4) Once in custody at the station, Applicant was administered a breathalyzer that produced a blood alcohol content reading of .11 %. (GE 4) Thereafter, he was booked and charged with DUI. (GEs 2-4; Tr. 39-40) Upon appearing in court, in September 2019 to answer the DUI charges, the charges were dismissed. (GEs 2 and 5; Tr. 34) Asked about the reasons for the dismissal, Applicant could offer no recollection. (Tr. 35) He was able to confirm that no alcohol classes were ordered by the court hearing his case.

Applicant continued to consume alcohol between December 2017 and December 2019, and in December 2019, he was involved in another alcohol-related incident. (GEs 2-3) During a celebration of his current girlfriend's birthday, he consumed too much alcohol. Responding to his friends' 911 call, police came to the scene to assess Applicant's condition. Based on their assessments, they engaged medics to transfer Applicant to a local hospital for observation. (GEs 2-3)

In November 2021, Applicant was stopped, arrested, and charged with DUI after consuming several beers and a mixed drink while dining with friends in a local tavern. (GEs 2-6; Tr. 44-48) After conducting a field sobriety test, investigating police officer arrested Applicant and charged him with DUI. (GE 2; Tr. 41-46) Ultimately in 2022, the charges were dismissed. (GE 6) Asked to explain the reasons for the dismissal, Applicant could not recall the reasons for the dismissal. (Tr. 51) He acknowledged, though, that he intentionally withheld information pertaining to his 2021 DUI arrest and charges from his current employer. (Tr. 74-75) Acknowledging his awareness of his employer's general emails covering reporting requirements of unusual events (to include DUIs), he withheld information from his employer's facility security officer (FSO) about his 2021 DUI out of concern his still pending 2021 DUI charges could impact his employment and clearance prospects. (Tr. 76-79)

Between November 2021 and May 2024, Applicant assured that he reduced his alcohol consumption to monthly beer consumption. (Tr. 59) Pressed for clarification in light of his prior conflicting account of abstinence between November 2021 and September 2024 (GE 2), Applicant acknowledged his prior mistake in claiming abstinence for the period. (Tr. 61-64) Afforded an opportunity to supplement the record with documentation of a post-November 2021 DUI course recommendation from his counsel, Applicant supplied a certificate of completion bearing a date of January 2021. (AE A) This certificate preceded his November 2021 DUI by 10 months) and, as such, further undermines his credibility on the strength of his post-2021 alcohol rehabilitation efforts.

Neither prior to nor after his last DUI in November 2021 had Applicant ever been diagnosed for alcohol abuse disorder. (Tr. 99) Nor had he ever enrolled in any self-help programs like Alcoholics Anonymous (AA). (Tr. 90) Applicant affirmed, too, that no family member had ever recommended any type of alcohol counseling or help for him. (Tr. 90)

In June 2023, Applicant was referred by DoD to a state-licensed psychologist for an independent psychological evaluation to assist in the determination of his security clearance eligibility. (GE 3) Prefacing his evaluation of Applicant's psychological condition, Dr. A, confirmed Applicant's furnished accounts of his substance-related non-work incidents prior to his March 2020 employment with his currently identified employer. (AE A)

After taking Applicant's psychological history, administering a personality test designed to provide information relevant to a clinical diagnosis, and his occupational functioning, Dr. A made no diagnoses on the Axis I scale of the Diagnostic Statistical

Manual of Mental Disorders-5, American Psychiatric Association (5th ed. 2013) (DSM-5). (GE 3) Still, Dr. A expressed concern over Applicant's excessive alcohol consumption over a course of several years spanning 2017 through 2021, despite the adverse consequences he experienced.

Based on his findings and assessments of Applicant, Dr. A cautioned that given Applicant's history of excessive alcohol consumption, his reliability and trustworthiness should be considered questionable. (GE 3) Factors supporting Dr. A's assessments included Applicant's history of excessive alcohol consumption (2017-2021), his displayed lack of forthrightness, his acknowledgement of maladaptive behavior treatment protocols, his over reliance on the twin dismissals of his prior DUI charges waged against him, and his failure to participate in treatment programs 2017 and 2021, respectively. (GE 3)

Whether Dr. A had prior knowledge of Applicant's November 2021 DUI is unclear. Applicant, for his part, never verbally disclosed his most recent 2021 DUI incident to Dr. A, and the specific 2021 DUI incident is not recited in Dr. A's evaluation report. (GE 3; Tr. 74-75) Applicant himself acknowledged his intoxication status prior to his November 2021 DUI arrest and charge based on his review of the toxicology report. (Tr. 70) And, he also acknowledged his deliberate failure to disclose his 2021 DUI arrest and charge to the evaluating psychologist. (Tr. 72)

After foreclosing any future intention to consume alcohol in the interrogatory responses he returned to DOHA in May 2024, Applicant resumed his drinking (monthly) between the months of May through September 2024. (GE 2; Tr. 63-64) Asked to reconcile his return to drinking after forswearing his intentions to avoid future alcohol consumption, he could only assure that his four previous alcohol-related incidents were behind him. (Tr. 66-67)

Since his psychological evaluation sessions with Dr. A in June 2023, Applicant has not followed up with any treatment or counseling sessions with any mental health or substance abuse counselors or enrolled in any self-help organizations like AA. He continues to deny having any alcohol consumption issues.

Applicant's employment issues

In 2019, Applicant was involuntarily terminated (choosing the termination option over the demotion option afforded him by management) from his then employer for violating his company's fraternization rules by engaging in a romantic relationship with a subordinate employee (a cashier) he supervised. (GE 4; Tr. 80-84) He admitted to dating his subordinate for several months before he was spotted by a coworker who later reported him. (Tr. 82). At the time, his subordinate employee was 20 years old, and he was 23. (Tr. 83-84) Applicant acknowledged his mistake in judgment in dating his subordinate and establishing a romantic relationship with her as her direct supervisor. (Tr. 85-86)

While Applicant had never been furnished a copy of any written company policy covering the company's fraternization rules and policy, he admitted to being generally aware of such a policy before he engaged his subordinate in a romantic relationship. (Tr. 86) His assurances that he never extended any favorable treatment to his subordinate are not controverted by any evidence in the record, are otherwise credible, and are accepted. Accepted also are his assurances that his engagement of a subordinate in a romantic relationship was a first-time occurrence that has never been repeated,

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. 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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines 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 AG guidelines 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 guidelines 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.

Criminal Conduct

The Concern: 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. AG ¶ 30.

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 abuse (to the point of intoxication). His alcohol abuse history includes two DUIs and two hospitalizations for treatment of alcohol abuse. Treatment admissions consisted of outpatient sessions designed to promote his recovery from exhibited alcohol-abuse. Applicant’s alcohol incidents are cross-alleged under Guidelines J and E. Additional security concerns involve cited Applicant violation of his company’s fraternization rules by engaging in a romantic relationship with a subordinate.

Applicant’s alcohol issues

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 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 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.” Both of these disqualifying conditions cover Applicant’s established history of abusive drinking that produced both DUI arrests and charges and recurrent hospitalizations.

Without more documented information on the remedial steps he has taken to minimize the risks of future alcohol-related incidents, Applicant is ill-positioned to take advantage of any of the potentially available mitigating conditions. Both his lengthy drinking history, his relative recency and recurrency of his hospitalization, and his DUI arrests and charges reflect behavior (both past and recent) at odds with the current reliability, trustworthiness, and judgment requirements necessary for holding a security clearance. His alcohol consumption history is not accompanied by any credible accounts of his post-November 2021 drinking practices, and based on his conflicting accounts of his most recent drinking history and absence of any counseling designed, to neutralize recurrence risks, reliable timelines of sustained abstinence cannot be established at this time.

Criminal conduct concerns

Security concerns are also raised over Applicant's multiple alcohol-related arrests and charges emanating from two DUI offenses in June 2017 and again in November 2021. Applicable under the criminal conduct guideline is DC ¶ 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."

Applicant's multiple instances of DUI offenses reflect serious breaches of good judgment and respect for the public laws in force in his state of residence. Judgment issues associated with these offenses are neither dated nor mitigated by positive steps taken by Applicant to avert future recurrences. Without more evidence of rehabilitative steps on Applicant's part to demonstrate lessons learned from his still recent DUI offenses and drinking excesses, potential mitigating conditions are not available to Applicant.

Personal conduct concerns

Personal conduct concerns attributable to Applicant's 2019 involuntary termination resulting from his violation of his company's fraternization rules by engaging in a romantic relationship with a subordinate at the time are unsubstantiated. While Applicant chose the termination option over acceptance of a demotion, he was never provided any prior written notice of his company's fraternization rules. So, while he can be faulted for not exercising more common sense in avoiding a romantic relationship with an employee he supervised, isolated misjudgments based on a failure to use good judgment in an isolated situation is not enough to create independent material personal conduct concerns. Allegations of questionable judgment and unwillingness to comply with rules and regulations are unsubstantiated.

Because Applicant's two DUI offenses are explicitly covered under both the alcohol consumption and criminal conduct guidelines, they need not be afforded separate consideration under the personal conduct guideline. Accordingly, SOR allegations covered by SOR ¶¶ 1.a-1.b of Guideline G are resolved favorably under Guideline E.

Unfavorable conclusions are warranted, however, with respect to Applicant's deliberate omission of his 2021 DUI arrest and charge in the background information he provided the DOHA-engaged licensed psychologist in June 2023. Not until confronted by Department Counsel with this material omission did Applicant acknowledge the omission and his harbored intention at the time to withhold this information from the evaluating psychologist. Whether disclosure of the DUI arrest would have impacted Dr. A's non-diagnosis in any material way is unclear. Applicable to Applicant's omission is DC ¶ 16(b), "deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government representative."

Because Applicant had to be reminded and confronted by Department Counsel before finally acknowledging his deliberate withholding of his 2021 DUI arrest and charge from the evaluating psychologist, potentially applicable mitigating condition MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts," covered by Guideline E is not available to Applicant. None of the remaining mitigating conditions covered by Guideline E apply to Applicant's situation.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of recurrent alcohol-related hospitalization and DUI arrests and charges are incompatible with his holding a security clearance. Since his last DUI incident in November 2021, he has made no documented progress in managing his alcohol-related issues and shows questionable reliability, trustworthiness, and good promise in establishing a regimen of sustained abstinence or safe drinking (despite his past claims). While he deserves considerable credit for his contributions to the defense industry, based on the evidence presented, it is still too soon to absolve him of risks of recurrence.

Cross-alleged personal conduct concerns and separately alleged concerns over Applicant's violation of his previous employer's company rules and policies covering fraternization of supervised employees are mitigated. Unmitigated, though, are Applicant's omission of his November 2021 DUI from the DOHA-engaged psychologist who evaluated Applicant in June 2023.

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, cross-alleged criminal conduct, and SOR allegation 3.c of the personal conduct guideline are not mitigated. Personal conduct concerns covered by SOR ¶¶ 3.a (unsubstantiated) and 3.b (adequately covered by Guideline G) are mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE G (ALCOHOL CONSUMPTION):	AGAINST APPLICANT
Subparagraphs 1.a-1-e:	Against Applicant
GUIDELINE J (CRIMINAL CONDUCT):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 3.a-3-b:	For Applicant
Subparagraph 3.c:	Against 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge