



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



Appearances

For Government:
Aubrey De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

01/07/2025

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 1, 2021. (Government Exhibit 1.) On April 4, 2024, the Defense Counterintelligence and Security Agency Central Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption) and J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) soon afterwards, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 29, 2024. The case was assigned to another administrative judge on June 6, 2024. The case was reassigned to me on June 7, 2024. The Defense Office of Hearings and Appeals (DOHA) issued Notices of Hearing on June 17, 2024; and June 18, 2024. I convened the hearing as scheduled on July 24, 2024. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through J. His exhibits were also admitted without objection. Applicant requested that the record remain open for receipt of additional documentation. He submitted Applicant Exhibits K, L, and M in a timely fashion, and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 8, 2024.

Findings of Fact

Applicant is 42 years old and divorced. He has two children. He has a high school education. Applicant has been employed by a defense contractor since 2014 and seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, 17, and 18.)

Paragraph 1 (Guideline G, Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he consumes intoxicants to excess. Applicant admitted both allegations under this paragraph with explanations.

1.a. Applicant admitted that he had been arrested for Driving Under the Influence (DUI) in November 2004. He drank to the point of intoxication, fell asleep behind the wheel, and crashed his car into a fire hydrant. He was convicted of the offense on March 21, 2005. His sentence included summary probation for 36 months, to pay a fine, and 100 hours of weekend work. His sentence also required him to "enroll and participate in and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program." His driver's license was suspended until he completed the program. He did not complete the program, which resulted in his arrest for Driving on a Suspended License, further discussed under subparagraph 2.a, below. (Tr. 21-23; Government Exhibit 2 at 4-6, 10-11.)

1.b. Applicant admitted he had been arrested on January 2, 2023, for various offenses including Driving Under the Influence with Minor Passengers, Driving with a Blood Alcohol of .15 or more, and several firearms offenses. At the time of the arrest Applicant was recently divorced. He and a friend went out drinking and he became intoxicated. In an impaired condition he picked up his minor children. He stated that because the children were disruptive, he took his eyes off the road and hit a parked car. (Tr. 29-32, 51-52; Government Exhibit 2 at 8-10.)

The department of children and family services for the county in which Applicant lives conducted an investigation of the accident. Based on the investigation, which included an interview with his oldest daughter and Applicant, a finding of severe neglect was made with regard to his conduct. He is contesting this finding. He continues to have normal visitation with his children. (Tr. 50; Government Exhibit 2 at 12, 28-32.)

Applicant pleaded guilty to Driving With a Blood Alcohol of .08 or more with Minor Passengers and two firearms offenses. He was sentenced on October 10, 2023, to a suspended 60 days in jail, 36 months of formal probation, a 9-month DUI program, parenting classes, and fines. In addition, he is to abstain from alcohol for the duration of his probation. His driver's license was suspended. (Tr. 35-36, Government Exhibit 5.)

Applicant submitted documentation showing that he had successfully completed the DUI program, the parenting classes, and his work requirement. He has a current driver's license. He also submitted documentation from the probation department showing that he no longer had to report to his probation officer in person. Rather, he could use a kiosk for any reporting requirements. His probation expires October 10, 2026. (Tr. 36-42; Government Exhibit 2 at 34, 36; Applicant Exhibits G, H, I, J, K, and L.)

Applicant stated that he has not had anything to drink since the date of his arrest in 2023, and that he does not intend to drink anything in the future. He further stated and submitted documentation showing that he had attended Alcoholics Anonymous (AA) meetings. He had several sessions of private therapy as well. He is not currently attending therapy or self-help groups. He does not believe himself to be powerless against alcohol or a problem drinker. He does admit that drinking has caused him problems and that he had driven after excessively drinking in the past. (Tr. 26, 29, 42-47, 52-53; Applicant Exhibit F.)

Paragraph 2 (Guideline J, Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in criminal conduct that creates doubt about a person's judgment, reliability, and trustworthiness.

2.a. Applicant admitted that he was arrested in approximately July 2007 for Driving on a Suspended License. Under questioning, he admitted that, since he had not completed all the requirements of his conviction set forth in 1.a, above, he continued to drive without a valid driver's license. At the time of the arrest, he was still on probation for the original DUI offense. He was sentenced to serve five days in jail. (Tr. 23-25; Government Exhibit 2 at 6.)

2.b. This allegation states that the information set forth under allegations 1.a. and 1.b, are cognizable under this guideline as well.

Mitigation

Applicant submitted letters of recommendation from co-workers that show him to be a successful, trusted, reliable, and valued employee. The letter writers include supervisors and the corporate Facility Security Officer (FSO). (Applicant Exhibits A, B, C, and M.)

Applicant also submitted a letter from a friend that sets forth his work to help her through a difficult time in her life. She also describes how he is devoted to his daughters. (Applicant Exhibits D and E.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline G, Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (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;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

The guideline includes one condition in AG ¶ 23 that could potentially mitigate the security concerns arising from Applicant's alcohol consumption:

- (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.

Applicant has been arrested and convicted for Driving Under the Influence twice, in 2004 and 2023. He is on probation for his second conviction, and will be on probation until October 2026. Disqualifying condition (g) applies to his first arrest due to his failure to complete a drinking driver program and driving on a suspended driver's license for over a year. He states he does not currently drink and does not intend to drink in the future. However, under the terms of his probation he is not allowed to drink at all. Given the severity of the circumstances of his last arrest and conviction, which involved his two minor children, enough time has not passed to assure the Government that he has truly changed. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline J, Criminal Conduct)

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

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 ¶ 31 describes two conditions that could raise security concerns and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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;

(c) individual is currently on parole or probation; and

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant had two alcohol-related arrests and convictions for DUI in 2004 and 2023. He was also arrested in 2007 for Driving on a Suspended License. This arrest was the result of a probation violation. Both of the above disqualifying conditions have application in this case.

The guideline includes four conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's alleged criminal conduct. Two have possible application to the facts of this case:

(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

(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.

Applicant's last arrest occurred in 2023, one and a half years before the record closed. He is still on probation for that offense. There is also a concern due to his history of probation violations, albeit 17 years. However, it is too soon to conclude that he has mitigated the security significance of this misconduct. Paragraph 2 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant 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), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding his past alcohol use and related criminal conduct. He has made a good start, but at the present time has not significantly reduced the potential for pressure,

coercion, or duress. In addition, based on the available evidence, I am unable to find that there is no or little likelihood of recurrence. Overall, the record evidence does create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G: **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b: Against Applicant

Paragraph 2, Guideline J: **AGAINST APPLICANT**

Subparagraph 2.a and 2.b: 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge