



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



In the matter of:

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/06/2025

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines G (Alcohol Consumption), J (Criminal Conduct) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On October 18, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, J, and E.

Applicant responded to the SOR on November 12, 2024 (Answer) and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on January 14, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 31, 2025, and he did not respond. The case was assigned on May 7, 2025. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant was arrested in 1999 and charged with driving while intoxicated¹ (DWI) (first offense) (SOR ¶¶ 1.a, 2.c, 3.a); that he was arrested in 2007 and charged with DWI; per se² (first offense) and DWI (first offense) (SOR ¶¶ 1.b, 2.c, 3.a); that he was arrested in 2009 and charged with DWI (first offense) (SOR ¶¶ 1.c, 2.c, 3.a); that he was arrested in 2021 and charged with driving under the influence of alcohol (DUI) (SOR ¶ 1.d, 2.c, 3.a); that he was arrested in 2006 and charged with criminal possession of marijuana and unlawful possession of marijuana (SOR ¶¶ 2.a, 3.a); and that he was arrested in 2022 and charged with driving while license suspended or revoked (SOR ¶¶ 2.b, 3.a). In his Answer, Applicant admitted all the allegations without further explanation.

Applicant is 60 years old. He has never married and does not have children. He received a bachelor's degree in 2017 and did not serve in the military. He has been employed with a defense contractor since July 2021. (Item 3)

In April 1999, at the age of 33, Applicant was pulled over on suspicion of DWI in State A. In his subject interview (SI), he stated that he was not intoxicated. He was charged with DWI and forced conversion. He was fined but the charges were ultimately dismissed. (Item 4)

In March 2006, at the age of 40, Applicant was stopped by police in State A, who found marijuana on him. In his SI, he stated that he believed he was racially profiled, and that he was not arrested but rather issued a ticket. He went before a judge and the charge was dismissed. He stated that he used marijuana for recreational use but stopped over ten years ago. (Item 4)

In May 2007, at the age of 41, Applicant was arrested for DWI; per se (first offense) in State A. There is no evidence that he was also charged with a separate DWI (first offense) charge, as alleged in the SOR. He pled guilty and his license was revoked, he was ordered to attend an alcohol abuse program, and he was fined. (Items 4, 5, 7)

In June 2009, at the age of 43, Applicant was arrested for driving while ability impaired and DWI (first offense) in State A. It appears the charges were later amended to DWI per se—prior conviction within ten years, a felony. In his SI, he stated that he was at a family cookout in a park and was listening to his car radio while standing

¹ The SOR alleges the charge as, "Driving While Under the Influence," but the evidence indicates the charge was State A's "driving while intoxicated" offense. This minor difference appears to be an administrative error and does not impact the substance of the allegation, therefore I will treat the charge in the allegation as driving while intoxicated.

² The SOR alleges the charge as, "Operate Motor Veh With BAC .08 of 1%," which in State A's vehicle and traffic law is specifically referred to as "driving while intoxicated; per se." I will refer to the charge as "DWI; per se" throughout this decision for ease of labeling. The subsection below DWI; per se is simply, "driving while intoxicated," and I will refer to that charge throughout this decision as DWI.

outside of his car with his siblings. Even though the engine was off, the keys were in the ignition and, because he had been drinking, he was arrested. He further stated that the officer who arrested him drove erratically and falsely reported that she had pulled him over on the highway. He pled guilty and was placed on probation for five years, had his license suspended for six months, and he was fined \$1,000. In his SI he stated that he was released from probation early due to the court seeing that he was earning good grades in college. (Items 4, 5, 7)

In December 2021, at the age of 56, Applicant was arrested for DUI in State B. In his SI, he stated that he got lost while driving and was pulled over because he was driving so slowly. He stated that he passed the field sobriety test and breathalyzer, but he declined to submit to a blood test, and he was arrested for DUI. The charge was reduced to failure to exercise due care, and he was convicted, his license was suspended, and he was sentenced to a fine and 12 months of probation. (Items 4, 6)

In July 2022, at the age of 57, Applicant was arrested in State B for driving while license suspended or revoked. In his SI he explained that he knew he was not supposed to be driving but he needed to pick up medication for his grandmother, so he decided to drive anyway. He was found guilty and fined, and he believes he was put on probation for about nine months. (Items 3, 4, 6)

In September 2021, Applicant reported that he drinks no more than one or two beers per night and that he does not have a problem with alcohol. He has never received counseling or treatment for alcohol or drug use. In May 2024, he reported that, from 1988 to 2019, he consumed alcohol five times per week, about two to four beers per day. From 2019 to the present, he reported that he only consumes alcohol on the weekends, about two beers throughout the weekend. He reported that he plans to keep his consumption "as is" and not increase it. He reported that he does not drink to intoxication, and he does not feel that he has a problem with alcohol. In August 2024, he reported drinking one to two beers daily and that he does not consume hard liquor. (Item 4)

Policies

This case is adjudicated under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. “Substantial evidence” is “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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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

Analysis

Guideline G, Alcohol Consumption

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

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The following disqualifying conditions are relevant:

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.

There is no evidence that Applicant was charged with DWI (first offense) in his 2007 arrest as alleged in SOR ¶ 1.b. That language as alleged is found for him. The evidence in the FORM and Applicant's admissions establish AG ¶¶ 22(a) and (c) for the remaining allegations, including the remaining language in SOR ¶ 1.b.

The following mitigating conditions are potentially applicable:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; 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 had four DUI/DWI arrests over the course of over 20 years, the last one being less than four years ago. While some of the alcohol-related incidents are quite old, they all happened while he was an adult and well into middle age, and, viewed in

their entirety, they illustrate a recurring pattern of behavior that evinces a very serious and troubling relationship with alcohol—one that remains a current concern. While there was a break in alcohol-related incidents between 2009 and 2021, it is important to note that this break began after his felony conviction and while he was on several years of probation, significantly more severe punishments than he had ever received before, so it is not surprising that he would behave more contritely in the years immediately following those events before falling back into old habits. Indeed, 12 years after his last alcohol-related arrest, he was once again arrested for DUI in 2021. Applicant's long history of alcohol-related arrests, and the recurrence of such behavior, even after a period of years and well into middle age, indicates that not enough time has passed, his behavior is not infrequent, and it casts doubt on his current reliability, trustworthiness, and judgment. AG ¶ 23(a) is not established.

There is no evidence that Applicant has acknowledged his pattern of maladaptive alcohol use. Though he stated in his SI that he reduced his alcohol consumption in 2019, the 2021 arrest shows that he was still drinking enough, on occasion, to find himself in serious trouble, and indicates that his modified pattern of consumption is not sufficient to avoid alcohol-related arrest. Furthermore, there is no evidence of alcohol evaluations, counseling, or treatment. While he states that he does not have a problem with alcohol, the record is devoid of any outside opinions regarding his alcohol use and whether he has a diagnosable issue with alcohol. AG ¶ 23(b) is not established.

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

The evidence establishes the following disqualifying conditions under this guideline:

AG ¶ 31(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

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant has had 6 arrests over more than 20 years, the last arrest occurring three years ago. The offenses all occurred when he was an adult and well into middle age. As with the older DWI arrests, the marijuana arrest on its own would normally be mitigated by time, but, when considered along with all the other arrests, it remains an indicator that Applicant has operated with a disregard for the law throughout his adulthood. Similarly, the most recent arrest for driving on a revoked license is due to his last DUI arrest and indicates that he continues to disregard rules and regulations and exercise poor judgment. As discussed above, in addition to the ongoing concerns from his marijuana and revoked license arrests, he has not sufficiently mitigated the concerns regarding his alcohol consumption and therefore, the potential for future alcohol-related offenses remains a concern and casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 32(a) is not established.

Applicant's descriptions of some of his arrests indicate he believes he was wrongfully accused and arrested. I am unable to evaluate those claims without reliable, corroborating evidence such as police reports, court records, or witness statements. Though wrongful arrests certainly can and do happen, however, it seems unlikely that Applicant would be so unlucky as to be repeatedly, wrongfully charged with DUI/DWI, in two different states, over the course of more than 20 years. It seems much more likely that Applicant is in fact not taking full responsibility for his actions, specifically his behavior when he drinks and the consequences of his drinking and driving. AG ¶ 32(c) is not established.

Applicant earned a degree in 2017 and has been gainfully employed since 2021. Three years have passed since Applicant's last arrest, which occurred after he earned his degree and started working as a contractor. Given his long history of arrests, and arrests after receiving his degree and working in his field, three years is insufficient to conclude that he has been successfully rehabilitated. AG ¶ 32(d) is not established.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following is potentially applicable 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.

As discussed in my Guideline G and J analyses above, Applicant's over-20 year history of arrests, primarily alcohol-related arrests, demonstrates security concerns under both guidelines and establishes AG ¶ 16(c).

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating condition potentially applies in Applicant's case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

In light of my findings under Guidelines G and J, AG ¶ 17(c) is not established for ¶ 3.a. Applicant has a long history of arrests, with the last one only three years ago. Given that he still consumes alcohol and there is no evidence that he has ever sought evaluation, counseling, or treatment, there is no evidence that this behavior is unlikely to recur, and the evidence as a whole casts doubt on Applicant's current reliability, trustworthiness, and good judgment.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines G, J, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 4999 U.S. 905 (1991). Applicant has not overcome this presumption. After weighing the disqualifying and mitigating conditions under Guidelines G, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his alcohol consumption, criminal conduct, and personal conduct.

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 (Alcohol):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant (Except for the language "and Driving While Intoxicated (First Offense)," which is found For Applicant)
Subparagraphs 1.c-1.d:	Against Applicant

Paragraph 2, Guideline J (Criminal Conduct): AGAINST APPLICANT

Subparagraphs 2.a-2.c: Against Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

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

Robert B. Blazewick
Chief Administrative Judge