



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00857  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

10/28/2019

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised under Guideline I and Guideline G. Eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on February 1, 2016. On April 17, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline I (Psychological Conditions) and Guideline G (Alcohol Consumption). Applicant answered the SOR on May 3, 2019, and requested a decision based upon the administrative record (Answer). On June 11 2019, the Government converted the case to a hearing before an administrative judge, and the case was assigned to me on June 20, 2019. On August 2, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 27, 2019. I convened the hearing as scheduled. Applicant and I were located in one location, and department counsel appeared via video teleconference from a second location.

Government's Exhibits (GE) 1 through 3 were admitted without objection, and Applicant testified. I received the complete transcript (Tr.) on September 4, 2019, and the record closed.

### **Findings of Fact**

Applicant is 31 years old. He has been married to his wife since 2008, and they have two minor children. He has a general education diploma. At the hearing he anticipated that he would receive a bachelor's degree in information security in September 2019. He is a remote-teleworker principal cyber-incident responder, who has been employed by a defense contractor since September 2015. He requires a security clearance for this employment. His interim secret clearance was revoked when the SOR was issued in April 2019. (GE 1; GE 2; GE 3; Tr. 10-11, 19-21)

In December 2008, Applicant enlisted in the U.S. Army, and a month later he started basic training. He was 20 years old. At the end of basic training, Applicant started to suffer from depression. He went to sick call to address his depression but was told that the feelings should dissipate at his next training course. Applicant had never suffered from depression prior to his service in the Army. (GE 1 at 21-22; GE 2 at 4; Tr. 11, 21, 47-48)

In March 2009, Applicant graduated from basic training and transferred to another Army base for specialized training. His depression continued to affect him. In July 2009, while he was living in the barracks, Applicant attempted to cut one of his wrists with a piece of plastic or metal. The cut was superficial, but Applicant went to another soldier's room to report what he had done to himself. The soldier helped Applicant get to an Army hospital. Applicant was admitted to the hospital's psychiatric inpatient unit for three to four days as a result of his suicidal gesture or ideation. He does not recall if the hospitalization was involuntary or voluntary. (GE 1 at 21-22; GE 2 at 5, 9; GE 3 at 4; Tr. 21-23, 47-49)

While he was in the hospital, Applicant went to group counseling sessions. After he was discharged from the military hospital, Applicant attended weekly group counseling for four to five months. He also worked with his military chain of command to address his issues and attempted to remain in the Army. (Tr. 22-23, 49-54)

Applicant was honorably discharged from the Army in December 2009, due his mental health issues, more specifically, a general inability to adapt. Following his discharge from the Army, Applicant did not have any subsequent suicidal ideations; therefore, he did not seek further treatment. However, he was upset that he was discharged from the Army, and he continued to feel depressed. (GE 1 at 21-22; GE 2 at 5; GE 3 at 4; Tr. 21-24, 54)

Approximately one year after his military discharge, Applicant had a one-time preliminary therapy session with a mental health professional. At that time, he was suffering from stress and needed help establishing coping mechanisms. After that session, he did not obtain further treatment from this professional, nor did he seek

treatment or medical advice from another health professional. Applicant did not have a primary-care physician and tried to address his stress issues by talking to his wife and a friend, and by playing video games. (Tr. 23-28, 54-56)

In 2011, Applicant continued to experience stress and anxiety, and as a result, did not want to go to work. He went to see his primary-care physician and was prescribed an unknown anti-depressant medication to address these issues. Applicant did not seek further medical care. He was consuming alcohol during this period. (GE 3 at 4; Tr. 54-56)

From approximately April 2014 until 2015, Applicant drank on average eight to ten drinks a day, depending upon whether it was a work or weekend day. He drank more heavily on the weekends. After his wife moved to the same town, his drinking decreased to approximately five to six beers in the evening and occasionally some shots of whiskey. Applicant started consuming alcohol after he turned 21 in February 2009. (Tr. 30-31, 37, 56, 68)

In 2015, Applicant found a therapist (Therapist A) on-line for treatment related to stress-based anxiety from his job at a prior employer. Applicant saw Therapist A two to four times in 2015, and he discontinued treatment by mutual agreement. Applicant initially saw Therapist A due to his own concerns about his level of alcohol consumption, and the possibility that he might have bipolar disorder. Various members of his family have histories of alcohol use disorder and bipolar disorder. (GE 3 at 4-5; Tr. 28-29, 32-35, 57-58)

Therapist A found that Applicant did not have bipolar disorder, but he suggested that Applicant abstain from alcohol for a week, which he did. During this timeframe, Applicant's wife expressed concern regarding his drinking. After refraining from alcohol for a week, Applicant continued to drink approximately five to six beers a night, but reduced his consumption of whiskey. Despite his concerns, Applicant continued to drink because of habit, and he enjoyed the taste of alcohol. (GE 3 at 4-5; Tr. 28-29, 32-36, 61, 68-69)

Applicant went in person to see Therapist A two times in July 2018 regarding his use of alcohol and his anxiety levels. Specifically, he was looking for coping mechanisms and medication to help decrease his consumption of alcohol and anxiety. At that time, he abstained from consuming alcohol for one week to determine if he could stop drinking. Applicant has not sought additional therapy since July 2018, despite an ongoing and continuing issue with anxiety. (GE 3 at 5; Tr. 38-43)

In February 2019, Applicant was required to submit to a psychological evaluation in conjunction with this security clearance. The evaluating psychologist (Psychologist A) reviewed Applicant's records, performed several tests, and interviewed Applicant prior to giving his opinion regarding Applicant's mental health and substance use. He diagnosed Applicant with generalized anxiety disorder; alcohol use disorder, mild; and compulsive personality traits. (GE 3 at 9) Additionally, Psychologist A opined that Applicant presents with an emotional and substance use condition that could pose a

significant risk to his judgment, reliability, and trustworthiness concerning classified information at the present time. Psychologist A stated, "Based upon all information currently available to me combined with the relatively long history of his present conditions, [Applicant's] prognosis to overcome his anxiety and alcohol use appears poor." (GE 3 at 10)

During the February 2019 interview with Psychologist A, Applicant acknowledged that he drinks too much and for the past two years, he had been drinking approximately five to six beers every day. Psychologist A opined that Applicant "reported engaging in habitual and binge substance use daily. It appears highly likely that [Applicant] consumes alcohol to the point of impaired cognitive ability and impaired judgment regularly." (GE 3 at 3-4, 9-10)

Applicant told Psychologist A that he consumes alcohol to help him relax and feel less anxious, which is consistent with Psychologist A's opinion that, "Given that his reported anxiety predates his alcohol consumption, it seems likely that his current alcohol consumption is a form of self-medicating his anxiety, a means to calm and relax himself." (GE 3 at 3-4, 9; Tr. 69-70)

Applicant denied having any suicidal thoughts since 2009; however, he told Psychologist A that he has a history of disturbances in mood, including anxiety and depression. One of the tests administered to Applicant indicated that "Applicant may have been reluctant to acknowledge personal limitations and he may repress or deny distress. This tendency may lead him to minimize, or perhaps be unaware of, problems or other areas where functioning may be less than optimal." (GE 3 at 7-8; Tr. 62)

Applicant testified that he reduced his whiskey consumption after meeting with Psychologist A in February 2019. Psychologist A noted in his findings that the information Applicant provided to him contained a number of discrepancies between the information provided by Applicant and the documentation provided by the DOD CAF. Additionally, Applicant's testimony regarding his history of consumption of alcohol was inconsistent. (GE 3 at 8; Tr. 45, 69-70)

The night before the hearing, Applicant consumed four beers and felt the effects of alcohol. The last time Applicant felt "hung over" was over the July 4<sup>th</sup> holiday. He does not remember how much alcohol he consumed, but it was more than 10 drinks. This was also the last time he consumed whiskey. He does not recall the last time that he went to work with a hangover. Applicant initially testified that as a teleworker, he has not started work hung over; however, after being confronted, he admitted that occasionally he teleworks while feeling hung over. (Tr. 32, 58-59, 62-63, 70-71)

The week before the hearing, Applicant abstained from alcohol for two days to help a friend who was attempting to abstain. The longest period Applicant has been able to abstain since 2014 is one week. Applicant's wife has expressed concerns regarding his drinking level, due to the financial costs and negative health consequences. Applicant continues to keep alcohol in his home. (Tr. 59-60, 67-68)

Applicant has never taken medication related to his consumption of alcohol. He has never attended Alcoholics Anonymous (AA), nor has he sought additional counseling related to his consumption of alcohol. Despite the 2019 diagnosis of alcohol use disorder and the issuance of the SOR, Applicant continues to drink alcohol because he enjoys the taste; it is a habit; and it helps him relax. He feels in a “better mental state when [he’s] in a buzz from drinking alcohol.” Nor has Applicant sought any additional treatment for his anxiety issues. (GE 3 at 7; Tr. 45, 62, 65, 69-70)

Applicant testified that he disagrees with Psychologist A’s diagnosis and assessment of his drinking. Specifically, he does not believe that his use of alcohol negatively affects his judgment or his ability to do his job. (Tr. 64)

In his Answer, Applicant submitted four letters of recommendation from colleagues and a family member. The letters describe him as polite, honest, professional, and knowledgeable. (Answer; Tr. 72-75)

### **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), which became effective on June 8, 2017.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline I: Psychological Conditions**

The security concern relating to the guideline for psychological conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline includes several conditions that could raise security concerns under AG ¶ 28. The following are potentially applicable in this case:

(a) behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and

(c) voluntary or involuntary inpatient hospitalization.

The record evidence established the above disqualifying conditions. Appellant has been diagnosed by a duly qualified mental health professional with a condition that impairs his judgment, reliability, and trustworthiness. At the hearing, he admitted that he has not received any treatment since July 2018. In 2009, Applicant was hospitalized for several days due to a suicidal gesture while he was on active duty in the Army.

AG ¶ 29 provides the following conditions that could mitigate security concerns in this case:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

Applicant has not sought treatment for his anxiety since 2018, nor has he ever sought consistent mental-health treatment, despite suffering from anxiety and depression for approximately ten years. There is no evidence that Applicant's alcohol use disorder or his anxiety are under control or in remission. Additionally, the record demonstrates that Applicant's anxiety and depression have been ongoing for many years and are not temporary conditions.

Applicant failed to provide evidence of consistent and ongoing treatment, and did not establish that he is no longer suffering from the underlying conditions. Mitigation under AG ¶ 29(a), 29(b), 29(c), 29(d), and 29(e) was not established.

## **Guideline G: Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to 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.

Applicant's admissions and the documentary evidence establish the following two disqualifying conditions under AG ¶ 22:

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

(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.

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline. Three are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has admitted to a history of abusing alcohol, and he has sought treatment intermittently since approximately 2014 or 2015 related to the level of his alcohol consumption. In February 2019, he was diagnosed by a duly qualified professional with alcohol use disorder, mild. Despite this diagnosis, he continues to consume alcohol to the point of intoxication. He has not sought treatment, attended AA, or significantly modified his behavior. Less than two months before the hearing,



Applicant consumed alcohol and drank to the point of intoxication. He presented no evidence of a pattern of responsible use of alcohol. AG ¶¶ 23(a), 23(b), and 23(d) do not apply.

### **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 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and I in my whole-person analysis. I also considered Applicant's favorable character evidence.

Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Psychological Condition:	AGAINST Applicant
Subparagraph 1.a:	Against Applicant
Paragraph 2, Alcohol Consumption:	AGAINST Applicant
Subparagraph 2.a:	Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge