



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-01741  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly M. Folks, Esq., Department Counsel  
For Applicant: *Pro se*

January 27, 2020

**Decision**

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Abuse), G (Alcohol Involvement), and E (Personal Conduct). Applicant submitted insufficient information to mitigate security concerns. National security eligibility for access to classified information is denied.

**Statement of the Case**

On February 27, 2018, Applicant submitted a security clearance application (SCA) seeking the continuation of a previously granted security clearance. On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) alleging security concerns under the guidelines referred to above. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) effective for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on August 8, 2019 (Answer), and elected to have the case decided on the written record in lieu of a hearing. In his Answer, he admitted all of the SOR allegations and provided two corrections regarding the “time frames” of his prior drug use.

On September 18, 2019, Department Counsel submitted the Government’s written case in a File of Relevant Material (FORM) that referenced 11 attached documents identified as Items 1-11 and five documents presented for administrative notice purposes. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. In her FORM, Department Counsel advised Applicant that he had the right to object to the admissibility of Item 11 as unauthenticated. Item 11 is a summary of Applicant’s background interview, which was conducted on March 20, 2018. Department Counsel informed Applicant that he could alternatively provide corrections and updates to the summary of his interview and that if he failed to object to Item 11 or to respond to the FORM, he may be determined to have waived objections to the admissibility of the interview summary and it may be considered as evidence in the case.

Applicant received the FORM on October 10, 2019, and provided a one-page response, dated October 22, 2019. In his response, Applicant did not object to the Government’s evidence, including Item 11, although he disputed one error in the FORM regarding a claim about Applicant’s use of marijuana in the past. Based upon the SOR allegations, this correction is accepted. Applicant also provided in his FORM response additional information regarding his history of drug and alcohol abuse and his intentions regarding future use of both drugs and alcohol. In the absence of an objection, I have included this document in the written record in this case. I have marked Items 1 through 11 attached to the FORM as Government Exhibits (GE) 1-11, respectively. GE 1 through 11 are admitted without objection. I have marked the five documents presented for administrative notice (AN) purposes as AN I through V and have taken administrative notice of the facts set forth therein that are of an undisputed nature. The case was assigned to me on November 19, 2019.

### **Findings of Fact**

I have incorporated Applicant’s admissions in his responses to all of the SOR allegations in my findings of fact and have noted his corrections to the relevant time periods referred to in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. Applicant’s personal information is extracted from GE 3, his SCA, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, the Government’s FORM, Applicant’s response to the FORM, and the documentary evidence in the record, I make the following findings of fact:

Applicant, 32, is unmarried and has no children. He has lived with his partner since approximately 2006. He earned a high school diploma in 2005 and has taken some college courses. He has worked for a defense contractor as a functions specialist since

2008. He was granted eligibility for access to sensitive compartmented information (SCI) in 2009.

In April 2016, Applicant self-reported to his security officer a one-time experience he had with an illegal drug, ecstasy, in November 2013. He was working as a contractor at a DOD agency with eligibility for access to SCI at that time. He wrote to his security officer that his guilt over the use of the drug causes him “massive anxieties” and that he is not a “risk of ever again partaking in such drug use.” He expressed his regret in reporting this incident in an untimely manner because it has been “an embarrassment and tax on my conscience.” After self-reporting this drug use, Applicant disclosed in a July 24, 2017 interview that he had also illegally used an inhalant commonly known as whip-its on one occasion in January or February 2017. He reported that on that one occasion he used 20 or more canisters of nitrous oxide along with a whipped cream dispenser to get high. In his Answer, he corrected the approximate date of this drug use as November 2016. He also reported in his July 2017 interview using a different inhalant, alkyl nitrates, three weeks before the interview. The common name of this inhalant is poppers, and it is used as a sexual aid. In his Answer, he corrected the date of his use of poppers to have been in about March 2017. He wrote that he does not intend to use whip-its or poppers again. In each of the three instances of illegal drug use, the drugs were given to Applicant without any payment by him for the drug or inhalants. (GE 9 at 1-2; GE 8 at 5-6; Answer.)

Applicant has consistently maintained that his use of alcohol was a contributing factor in each of his three uses of illegal drugs. He has reported that his use of alcohol affected his judgment on each occasion. He has a long history of abusing alcohol. He has blacked out from excessive alcohol consumption on at least two occasions, first in August 2011 and a second time in about June 2017. In the past, he has been cautioned by friends and a family member about his excessive drinking. Due to his alcohol consumption, he has nearly lost his relationships with close friends, including his long-time partner. He stopped drinking for a brief period in 2017 and then resumed. In June 2018, he made a commitment to sobriety. He claims in his FORM response that he is seeking treatment for depression, which he believes is the underlying cause of his alcohol abuse. While I accept Applicant’s statement that he is receiving treatment for depression, the record contains no evidence regarding any treatment by an alcohol-abuse specialist, with an exception of a one-time session with a counselor. There is no evidence in the record that he has been diagnosed as having an alcohol-abuse disorder. (FORM response; GE 8 at 3-GE 4 at 2-4; GE 9 at 1.)

In his FORM response, Applicant asserted that he has discontinued contact with the individuals with whom he has used the illegal drug and inhalants in the past. Since choosing to remain sober, he has changed his social group to avoid persons who drink alcohol and use drugs. He expressed a desire “to self-correct and heal” from his depression and past abuse of alcohol, and writes that “at current it is my intent to continue to focus on self-care and repair.” (FORM response.)

In his Answer, Applicant admitted the five allegations in the SOR under Guideline E, four of which allege falsifications. Two of these subparagraphs (SOR ¶¶ 3.a and 3.c) allege that he falsely denied any illegal drug use in his December 30, 2013 security clearance application and falsely omitted his March 2017 use of poppers in his February 2018 SCA. The other two falsification allegations (SOR ¶¶ 3.b and 3.d) assert that he falsely denied in the 2013 application and again in the SCA that he used illegal drugs while possessing a security clearance. The earlier application is not included in the Government Exhibits attached to the FORM, but the record evidence refers to that application and to Applicant's false denial in the application of any prior drug use, when in fact, he used ecstasy one month before he signed the application and while he already possessed a clearance. (GE 5 at 8.)

In his Answer, Applicant admitted that he falsely answered a question in his February 2018 SCA that asked if he had "illegally used any drugs or controlled substances" in the past seven years or while possessing a security clearance, by failing to disclose his use of poppers in 2017. In his SCA, Applicant disclosed his past use of ecstasy and whip-its, but failed to disclose his use of poppers. In his March 2018 background interview for his pending collateral clearance, he made the same two disclosures and omitted his use of poppers. By admitting the falsification allegations in SOR ¶¶ 3.c and 3.d, Applicant has conceded that the use of the inhalant alkyl nitrates, or poppers, constitutes substance misuse for purposes of a security clearance adjudication just as the use of whip-its is a substance misuse, and his use of poppers should have been disclosed in his SCA. (GE 11 at 3-4.)

The fifth admitted Guideline E allegation cross alleges the security concerns raised in the first two paragraphs of the SOR, which set forth the allegations under Guidelines H and G. Applicant is not disputing any of the facts in the SOR, except that he corrected the approximate dates of his use of the two inhalants in his Answer.

As a result of a security investigation by another government agency, Applicant's eligibility for SCI access was suspended in July 2017 and then revoked on November 30, 2017. The revocation decision of the other government agency was finalized on January 30, 2018. (GE 5, 11 at 3.)

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of 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." Exec. Or. 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." Exec. Or. 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*, 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. 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*, 484 U.S. at 531.

## Analysis

### Guideline H (Drug Involvement and Substance Misuse)

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The following disqualifying conditions under Guideline H are potentially applicable:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant's admissions in his Answer and the documentary evidence attached to the FORM establish the above potentially disqualifying conditions.

The following mitigating conditions under Guideline H are potentially applicable:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that

any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) is only partially established. Applicant's substance misuse was infrequent. His misuses of an inhalant occurred in November 2016 and March 2017. This behavior occurred after Applicant had advised the Government in his April 2016 self-report of his past use of ecstasy that he had no intention of using illegal drugs again. Applicant blames this infrequent drug use on instances of his abuse of alcohol with drug-using friends. While it is significant that Applicant has chosen to live a sober lifestyle, that commitment was made in June 2018, and his commitment was preceded by a brief and unsuccessful attempt to remain sober in 2017. I cannot conclude that Applicant's use of illegal drugs will not recur unless and until he has successfully remained abstinent of both drugs and alcohol for a much longer period of time. Applicant's recent substance misuse casts doubt on his current reliability, trustworthiness, and good judgment.

Applicant has acknowledged his past drug involvement and substance misuse and has provided evidence of actions taken to avoid future abuses. He has established a period of abstinence since March 2017. He has disassociated himself from drug-using friends. He has not provided a signed statement indicating his intent not to use illegal drugs in the future with the acknowledgement that any violation of that statement would be grounds for the revocation of national security eligibility, as provided in AG ¶ 26(b)(3). He wrote in his FORM response: "I was also unaware of the mitigation credit condition of a signed statement of intent to abstain from all drug involvement and substance misuse, and in hindsight wish I was aware of the weight of providing such a statement." This statement demonstrates Applicant's awareness of the mitigating condition set forth in AG ¶ 26(b)(3), but for some reason he failed to provide such a statement with his FORM response. AG ¶ 26(b)(1) and (3) are partially established.

### **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 under Guideline G are potentially applicable:

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.

Applicant's admissions in his Answer and the documentary evidence attached to the FORM establish the above potentially disqualifying conditions.

The following mitigating conditions under Guideline G 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.

AG ¶ 23(a) is not established. Applicant's abuse of alcohol was sufficiently frequent to be a concern to his friends and mother, and therefore is a security concern to the Government. His commitment to abstinence was made a little over a year before he submitted his FORM response, which is the most recent evidence in the record on that issue. In light of his lengthy history with abusing alcohol, twice resulting in Applicant blacking out, insufficient time has passed to permit a conclusion that his abuse of alcohol is not recent and is unlikely to recur. His failed attempt to stop drinking alcohol in 2017 supports that conclusion. Applicant's abuse of alcohol prior to June 2018 cast doubts about his current reliability, trustworthiness, and good judgment.

AG ¶ 23(b) is only partially established. Applicant has acknowledged his pattern of maladaptive alcohol use and has since June 2018 taken action to overcome this problem by remaining abstinent. Since he has not received treatment recommendations for his alcohol abuse and has only been abstinent for a relatively short period of time compared to his many years of excessive drinking resulting in poor judgments and choices, Applicant has not clearly established this mitigating condition.

### **Guideline E (Personal Conduct)**

The concern under this guideline 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 following disqualifying conditions under Guideline G are potentially applicable:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(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.

Applicant's admissions of the allegations in SOR ¶¶ 3.a through 3.d establish the potentially disqualifying condition set forth in AG ¶ 16(a). His unmitigated security concerns raised in paragraphs 1 and 2 of the SOR regarding his past drug involvement and substance misuse and his alcohol consumption are sufficient to be disqualifying, especially since he knew any drug involvement while holding a security clearance would likely be disqualifying. To the extent that such behavior is not disqualifying, the pattern of irresponsible behavior 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. Accordingly, the potentially disqualifying condition set forth in AG ¶ 16(c) is established.

The following mitigating conditions under Guideline E are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(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; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Neither of the mitigating conditions in AG ¶¶ 17(a) and (c) have been established. Applicant waited until April 2016 to self-report his 2013 use of ecstasy, which occurred about one month before he submitted his 2013 security clearance application. Also, he did not fully disclose his substance misuse in 2016 and 2017 until he was undergoing an investigation for his use of ecstasy. His failure to report his use of poppers in his 2018 SCA shows a continued attempt to conceal the extent of his substance misuse. Moreover, the offense of concealment was not minor and was frequent. Also, Applicant's misuse of alcohol as well as drugs compounds the seriousness of Applicant's behavior, creating doubt about his reliability, trustworthiness, and good judgment.

With respect to AG ¶ 17(d), Applicant has acknowledged his various problematic behaviors, and by finally admitting all of his past drug use, he has taken positive steps to change his uncomfortable history of concealing his past drug use. He is also receiving treatment for his depression, which he believes is the underlying cause of his past abuse of alcohol. He has provided little information about his treatment and how long he has been seeing a therapist. Overall, insufficient time has passed to permit a conclusion that Applicant's past behaviors of concealment and abuse of alcohol and drugs will not recur. AG ¶ 17(d) is only partially established.

### **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 and applying the adjudicative factors in AG ¶ 2(d). These factors are:

- (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 H, G, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). In particular, I have given significant weight to Applicant's relatively young age and the growth and maturity

he has recently experienced. He has struggled with difficult issues and social pressures and is now just beginning to realize that in the adult world serious responsibilities require serious adult behavior. I have recognized that his past drug use is limited to three instances of poor judgment, but this occurred over a number of years and should not have been repeated, especially in light of his security clearance eligibility. Applicant's history of fraudulently concealing his drug use, as recently as his 2018 SCA, makes it impossible to conclude with confidence that he will properly disclose any future drug use should that occur in response to new or old stressors in his life. It is also too soon to be able to predict with confidence that Applicant will continue to abstain from drinking alcohol and abusing drugs.

After weighing the disqualifying and mitigating conditions under Guidelines H, G, 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 past actions.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2. Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a through 3.e:	Against Applicant

### **Conclusion**

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

John Bayard Glendon  
Administrative Judge