



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



In the matter of:)
)
) ISCR Case No. 20-00198
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

January 20, 2022

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On April 25, 2018, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On May 29, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; Guideline J, Criminal Conduct; and Guideline G, Alcohol Consumption. The action was taken 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) effective within the DoD after June 8, 2017.

Applicant answered the SOR on February 22, 2021, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on October 25, 2021, and the hearing was convened as scheduled on November 16, 2021. The

Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered four exhibits, referred to as Applicant's Exhibit A through D, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on November 30, 2021, to allow the Applicant to submit additional supporting documentation. Applicant submitting nothing further. DOHA received the transcript of the hearing (Tr.) on November 23, 2021.

Findings of Fact

Applicant is 51 years old and married with one daughter and three step-children. He has a high school diploma. He is employed by a defense contractor as an Aircraft Structural Mechanic. He is seeking to obtain a security clearance in connection with his employment.

Applicant began working for his current employer in May 2018. (Government Exhibit 1). He has never applied for a security clearance before, and has no military service. Applicant admits each of the allegations set forth in the SOR. (See, Applicant's Answer to SOR dated February 22, 2021.)

Guideline H: Drug Involvement and Substance Misuse

Applicant has an extensive history of illegal drug involvement and substance misuse, including two narcotic-related arrests. His illegal drug use includes cocaine, marijuana, and crystal methamphetamine, at various times, beginning in about January 1987, and continuing until November 2017. He has also purchased cocaine from about May 2007 to November 2017.

In April 2002, Applicant was arrested and charged with Possession of a Narcotic Controlled Substance. Applicant cannot recall the particulars of this arrest and charge, but he does not deny that it occurred.

In January 2005, Applicant was arrested and charged with Possession of a Narcotic Controlled Substance. Applicant explained that he was in possession of paraphernalia and not drugs. Applicant was with his girlfriend, and was driving a truck with no license plates. He took his girlfriend out to dinner, and on the way home they were stopped by the police. Applicant gave the officer permission to search the truck, and they found a "bullet," a plastic paraphernalia storage device, shaped like a bullet, that is used to store narcotics. Applicant stated that he does not know why it was in his vehicle, since at the time, he was clean and sober. The officer also found a baggie with cocaine in it. Applicant was arrested. Applicant pled no contest to the charge of Possession of a Narcotic. Applicant was sentenced to pay court cost, fines, and complete community service, attend Narcotic Anonymous meetings, and take substance abuse courses through a court-required program.

In October 2017, Applicant failed a random drug test administered by his then employer. The results of the test were positive for cocaine. As a result, Applicant was terminated from his employment. (Government Exhibit 2, and Tr. pp. 34 and 43.) Applicant states that he has no intentions of ever using any illegal drug in the future. (Government Exhibit 1.)

Guideline J: Criminal Conduct

Applicant's history of criminal conduct creates doubt about his judgment, reliability, and trustworthiness. It also calls into question his ability or willingness to comply with laws, rules, and regulations.

In addition to his illegal drug involvement, Applicant has an extensive criminal history involving a number of alcohol-related arrests.

In about March 2001, Applicant was arrested the first time and charged with Driving Under the Influence of Alcohol/Drugs (DUI.) Applicant was convicted and sentenced to three years probation.

In about September 2006, Applicant was arrested a second time and charged with DUI. Applicant had been out with his girlfriend, shooting pool and drinking. As they left the bar, Applicant did not have his seatbelt on. As he drove away from the stop light, he was pulled over by the police. The officer smelled alcohol on Applicant's breath and administered the field sobriety test and the breathalyzer. Applicant failed the tests and was arrested and taken into custody. At court, Applicant pled no contest, and was sentenced to pay court cost, fines, and placed on probation for 36 months.

In about September 2012, Applicant was arrested a third time and charged with Hit and Run, Property Damage. Applicant had been consuming beer at a local bar for about five hours prior to the car accident that led to the Hit and Run, Property Damage charge. He got into a verbal altercation with another patron. When he was leaving the bar at about midnight, he was concerned that he may be followed by the individuals who were arguing with him. As he left the bar, Applicant was intoxicated and was not in control or paying attention while driving. Applicant side swiped a parked vehicle on the curb. He made it home, and had no encounter with police. Several days passed, and Applicant felt bad about what had happened, and decided to call the police. Applicant was advised to make an in-person report at the local police precinct. Applicant complied, and was arrested for and charged with Hit and Run, Property Damage. Applicant was sentenced to pay restitution, was placed on 36 months probation, required to pay court costs, and fines, and required to do 100 hours of community service.

In about December 2013, Applicant was arrested a fourth time and charged with DUI Alcohol/Drugs. Applicant had two beers over a four hour period while at a car show. Applicant then left and went to a bar where he consumed six to seven beers over a two hour period. When he left the bar, he peeled out of the parking lot, and launched into traffic at an excessive speed, and was pulled over by the police. Applicant

underwent a field sobriety test and breathalyzer and failed. He was arrested and charged with DUI. In court, Applicant pled no contest, and was sentenced to 36 months probation, required to complete 18 months of an alcohol education class, and served 3 weeks in jail. Due to overcrowded facilities, he served only 3 days in jail, and was let go. An ignition lock was placed on his vehicle.

The SOR alleges that in about March 2014, Applicant was arrested and charged with DUI. This was not an additional arrest. Apparently on this date, Applicant was convicted of the incident that occurred on December 2013.

Information set forth above under Guideline H is also adjudicated under this guideline.

Guideline G: Alcohol Consumption

Applicant's history of excessive alcohol abuse leading to questionable judgment, and the failure to control impulses, raises questions about his reliability and trustworthiness.

Applicant began consuming alcohol after graduating from high school. By age twenty-one he was drinking every weekend and consuming between eight and twelve beers on the weekends. Applicant would rarely drink alcohol during the weekdays. Applicant explained that he would frequently go "clubbing" where he would dance and drink. As time passed, Applicant's drinking increased to the point where he was regularly consuming between twelve to eighteen beers on the weekends. When his daughter was born, he slowed his drinking down for a period, but he has never tried to stop drinking completely. (Tr. p. 64.) Applicant does not believe that he has an alcohol problem. He explained that his goal is to stop drinking completely, but he is not there yet. (Tr. pp. 61-66.)

Applicant has never attended an alcohol rehabilitation program. He does not and has never attended Alcoholics Anonymous or Narcotics Anonymous voluntarily. He has only completed the court ordered alcohol education courses and counseling related to the sentencing imposed by the court for his violations. Applicant is currently working with his pastor who is counseling him, and encouraging him to get baptized, which the pastor believes will gradually help to improve other areas of Applicant's life. Applicant states that he no longer drinks and drives. Now, he only drinks at home at dinner. Applicant's daughter has told him more than once that she does not like him to drink alcohol. She has asked him not to drink, especially on her upcoming quincenara. (Tr. p. 67.)

Applicant is involved in his church, and plans to get deeper into his faith and continue to improve himself. He is embarrassed by his past misconduct. He believes that it has taken him some time for him to get his head straighten out. He admits that he has had an attitude problem. Now, instead of abusing alcohol and drugs, he spends time with his family. He enjoys working on classic cars, he goes to car shows with his

brothers, and spends time with his daughter. Applicant works a lot of overtime to stay busy and realizes that when he stays busy, he stays out of trouble.

Information set forth above under Guideline J is also adjudicated under this guideline.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 applies for access to classified information seeks to enter 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 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 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 H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 guideline at AG ¶ 25 sets forth three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

- (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

(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.

None of the mitigating conditions are applicable. Spanning over a thirty year period, from 1987 to November 2017, Applicant abused illegal drugs, including cocaine, marijuana, or crystal methamphetamine at various times. Applicant has not shown the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

Guideline J: Criminal Conduct

The security concern relating to the guideline for Criminal Conduct 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (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 judgement, 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.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. Neither of the conditions are applicable:

- (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 violated both Federal and state law by using, possessing and purchasing illegal drugs. Cocaine and alcohol were Applicant's drugs of choice. He stated that he has used cocaine between May 2007 and November 2017 about 100 times. He used marijuana between February 1987 and March 2015, mainly in high school, and a few times since then. He also used crystal methamphetamine on three occasions in 2007 while at a party.

Applicant's criminal police record reflects at least two drug-related arrests for Possession of Narcotics, in April 2002, and January 2005. In addition to his narcotic-related arrests, Applicant has been arrested on four occasions for DUI, and one arrest for Hit and Run/Property Damage. The most recent of these arrests occurred in March 2013. Applicant stated that the conviction for the 2013 arrest and charge occurred in 2014, and there was no evidence presented to the contrary.

Applicant's conduct demonstrates poor judgment, immaturity and a total disregard for the law. This is inexcusable. Applicant has not established that he is sufficiently reliable and trustworthy to access classified information. His extensive illegal drug use and his arrests for possession of controlled substances gives rise to serious concerns about his judgment, reliability and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offenses. The before-mentioned disqualifying conditions have been established and are not mitigated.

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.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The disqualifying conditions raised by the evidence are:

- (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;

(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

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

Concerning his alcohol abuse, the evidence shows that Applicant incurred at least four arrests and charges for DUI, and one Hit and Run, Property Damage charge. These incidents raise serious security concerns under AG ¶¶ 22(a) and 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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 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;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment or relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant failed to introduce sufficient evidence of rehabilitation. Applicant has a long pattern of abusive addictive behavior. Whether it has been with illegal narcotics or with alcohol, he has abused these substances for many years, and they have caused him many problems with law enforcement. Although it has not been determined if he is an alcoholic or is alcohol dependent, he has had at least five alcohol-related arrests away from work, the most recent one occurred as recently as 2013. Since 2013, Applicant has continued to consume alcohol. Applicant states that his goal is to quit drinking, but he is not at that point yet. Other than court ordered alcohol programs, Applicant has not voluntarily completed any type of alcohol treatment program. Under

the circumstances, Applicant has not demonstrated sufficient good judgment and reliability necessary to access classified information. ¶ 23 does not provide mitigation.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, J and G in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse, Criminal Conduct, and Alcohol Consumption security concerns.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g.	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e.	Against Applicant

Subparagraph 2.f.	For Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge