



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



In the matter of: )  
)  
) ISCR Case No. 20-03815  
)  
Applicant for Security Clearance )

**Appearances**

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

04/22/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the Guideline J (criminal conduct) security concerns, but he did not mitigate the security concerns under Guidelines G (alcohol consumption) and H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

**Statement of the Case**

On April 9, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, H, and J. Applicant responded to the SOR on July 20, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on December 23, 2021. 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 February 28, 2022. As of March 30, 2022, he had not responded. The case was assigned to me on April 12, 2022. The Government exhibits included in the FORM are admitted in evidence without

objection. I have also taken administrative notice of the statutes and policy memorandums requested by Department Counsel.

### **Findings of Fact**

Applicant is a 28-year-old employee of a defense contractor. He has worked for his current employer since July 2019. He is applying for a security clearance for the first time. He has a bachelor's degree that he earned in 2016. He is single without children. (Items 3, 4)

Applicant has a history of substance abuse. His alcohol use resulted in community service for an open container citation in 2014. He became very drunk in September 2015 after about 12 to 15 drinks. He engaged in a heated argument with his ex-girlfriend; she slapped him; and he may have slapped her. She obtained a temporary restraining order against him the next day. They were both college students, and their university directed him to complete six months of counseling, which he did. (Items 2-4)

Applicant had about 15 drinks (beer and liquor) in July 2019. An ambulance took him to the hospital for severe alcohol intoxication. He was given fluids at the hospital and released on his own accord after several hours. Applicant continues to drink, but he asserted that he is drinking more moderately, and he never drinks and drives. He admitted that he still occasionally gets drunk. In March 2021, he reported that he last became intoxicated and blacked out in February 2020. (Items 2-4)

Applicant used marijuana from about December 2015 through at least June 2019, and cocaine from about 2013 through at least February 2019. He reported his alcohol issues and his marijuana and cocaine use on a Questionnaire for National Security Positions (SF 86) he submitted in May 2020. He indicated for both drugs that his use was "Occasional use, socially. No more than once every few months." He stated that he intended to use the drugs in the future with the comment: "I would say there is a possibility of future use were the situation to arise socially." (Items 2-4)

Applicant was interviewed for his background investigation in August 2020. He discussed his marijuana and cocaine use. He asserted that he stopped using the drugs because he no longer had the desire to do so. He stated that he did not plan to use illegal drugs in the future, but he could not guarantee that he would not. He stated that in the right social setting, he would use both drugs in the future. (Item 4)

Applicant responded to interrogatories in March 2021. He certified that he had not used any illegal drugs since June 2019. He stated that he did not continue to associate with individuals who used illegal drugs, and he did not intend to use illegal drugs in the future. Applicant admitted without further explanation SOR ¶¶ 1.c and 1.d, which alleged that he intends to use cocaine and marijuana in the future. (Items 2, 4) He did not respond to the FORM, so additional information is not available.

## 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 H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse 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 guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant possessed and used marijuana and cocaine on multiple occasions over several years. He stated in his May 2020 SF 86 that he intended to use the drugs in the future. During his August 2020 background interview, he stated that he stopped using drugs because he no longer had the desire to do so, and that he did not plan to use illegal drugs in the future. However, he also admitted that he could not guarantee that he would not use drugs, and that in the right social setting, he would use marijuana and cocaine in the future. AG ¶¶ 25(a), 25(c), and 25(g) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially 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.

There is no evidence that Applicant has used marijuana or cocaine since 2019. In his March 2021 response to interrogatories, he certified that he had not used any illegal drugs since June 2019; he did not continue to associate with individuals who used illegal drugs; and he did not intend to use illegal drugs in the future. He also admitted, without further explanation, SOR ¶¶ 1.c and 1.d, which alleged that he intends to use cocaine and marijuana in the future. He did not respond to the FORM, so additional information is not available. It is possible that Applicant was just admitting to the allegations because that was his previous belief, and he no longer intends to use illegal drugs. But I just do not know. Applicant has the burden to provide mitigation. He did not do so.

### **Guideline G, Alcohol Consumption**

The security concern for alcohol consumption 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 guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and
- (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 was cited for open container in 2014; he had a domestic incident while drunk in 2015; and he was hospitalized for alcohol intoxication in 2019. The above disqualifying conditions are applicable.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following 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 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; 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 continues to drink, but he asserted that he is drinking more moderately, and he never drinks and drives. He admitted that he still occasionally gets drunk. In March 2021, he reported that he last became intoxicated and blacked out in February 2020. Applicant did not submit enough evidence to convince me that alcohol is no longer a problem. None of the mitigating conditions are sufficient to overcome concerns about his alcohol use, reliability, trustworthiness, and judgment.

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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 is potentially applicable:

(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 only criminal conduct allegation is the 2014 open container citation. That single minor offense is too remote to be a security concern. SOR ¶ 1.a is mitigated and concluded for Applicant.

### **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, H, and J in my whole-person analysis. Applicant may have his life in order after years of substance abuse or he may not. I just do not know. 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."

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the Guideline J (criminal conduct) security concerns, but he did not mitigate the security concerns under Guidelines G (alcohol consumption) and H (drug involvement and substance misuse).

### **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 H:	Against Applicant
Subparagraphs 1.a-1.d:	Against Applicant

Paragraph 2, Guideline G:	Against Applicant
Subparagraphs 2.a-2.d:	Against Applicant
Paragraph 3, Guideline J:	For Applicant
Subparagraph 3.a:	For Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge