



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



In the matter of: )  
)  
) ISCR Case No. 21-02285  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

07/08/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On November 30, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and H. Applicant responded to the SOR on February 28, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on March 16, 2022. 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 March 28, 2022. As of May 25, 2022, he had not responded. The case was assigned to me on June 16, 2022. The Government exhibits included in the FORM are admitted in evidence without objection.

## Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since December 2020. He is applying for a security clearance for the first time. He has an associate degree and additional college credits, but no bachelor's degree. He is single without children. (Items 2, 3)

Applicant has a history of substance abuse. He started using marijuana in about 2006. He was issued citations for possession of marijuana in 2006 and 2010. He stopped using marijuana after the second citation, but his alcohol use started to become problematic in about 2011. It increased to the point that he was drinking beer daily and liquor several times a week. He was arrested and charged with driving while intoxicated (DWI) in 2012. He pleaded guilty and was sentenced to 45 days in jail, with all of the jail time suspended; probation for one year; a fine and costs; and attendance at an alcohol class. (Items 1-3)

Applicant's alcohol use contributed to medical problems, resulting in inpatient hospitalizations in July 2019 and from October 2019 to December 2019. He has not had any alcohol since he was admitted to the hospital in October 2019. He was told that drinking again could kill him. (Items 1-3)

Applicant was prescribed opioid medication for the pain. After consulting with his pain-management doctor, he decided that marijuana was a better alternative than opioids. In March 2020, he resumed using marijuana, but only for medicinal purposes. He purchased the marijuana about once a month. (Items 1-3)

Applicant reported his alcohol issues and his marijuana use on a Questionnaire for National Security Positions (SF 86) he submitted in January 2021. He stated that he intended to use marijuana in the future with the comment: "I use this for medical reasons. As suggested by my Doctors. It provides a level of relief that could only be achieved by heavy narcotic and opioid medication." (Item 2)

Applicant provided similar information when he was interviewed for his background investigation in March 2021 and in his response to interrogatories in October 2021, in which he wrote:

My use of medical cannabis/marijuana has been a vital tool in my journey of recovery and has helped me become the best me I have ever been. In addition to the fact that it helped me stop taking heavy doses of opioids almost immediately, its use helps me with pain relief, gastric stress/problems relief, sleep issues, and it works in conjunction with my anxiety medication for anxiety relief. If permitted, I would like to continue to use medical cannabis. (Item 3)

Applicant wrote in his response to the SOR: "I am willing to work and find an alternative medical solution, but until that medical solution is found, I'm going to

continue to use the medical solution that works, as it is legal in my state to do so.” 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 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 admittedly was a heavy drinker up through October 2019. He was arrested for DWI in 2012. The above disqualifying conditions are applicable.

SOR ¶¶ 2.b and 2.c allege Applicant’s hospitalization “for medial issues due, at least in part, to [his] excessive alcohol consumption.” SOR ¶ 2.b also alleges that he continued to drink excessively after the hospitalization. The gravamen of these allegations is not the hospitalizations, it is the excessive drinking before and after the hospitalizations. The excessive drinking is already alleged in SOR ¶ 2.a. When the same conduct is alleged twice in the SOR under the same guideline, one or more of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶¶ 2.b and 2.c are concluded for Applicant.

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; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has not had a drink since October 2019, and his health prevents him from drinking. I find evidence of successful rehabilitation, and that alcohol consumption does not cast doubt on his current reliability, trustworthiness, and good judgment. Alcohol consumption security concerns are mitigated.

### **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 from 2006 to 2010. He resumed using marijuana for pain-management purposes in March 2020. Marijuana, including medical marijuana, remains a controlled substance and illegal under federal law. He stated multiple times that he intended to use marijuana for medicinal purposes 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.

Applicant's marijuana use from 2006 to 2010 is mitigated. SOR ¶¶ 1.d and 1.e are concluded for Applicant.

Applicant wrote that he would continue to use medical marijuana, "as it is legal in [his] state to do so." Applicant did not violate any state law when he possessed and used marijuana for medicinal purposes. I believe Applicant has been completely truthful and forthcoming, and his position has become increasingly common and accepted. However, marijuana possession is still a federal crime, and inconsistent with holding a security clearance. None of the mitigating conditions are applicable, and Applicant's illegal drug use is not mitigated. Additionally, as an unlawful user of a controlled substance, he is precluded from holding a security clearance by the Bond Amendment.<sup>1</sup>

### **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

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<sup>1</sup> IRTPA of 2004 § 3002, 50 USC § 3343; and Appendix B of the adjudicative guidelines (Bond Amendment Guidance).

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 H in my whole-person analysis.

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 G (alcohol consumption) security concerns, but he did not mitigate the security concerns under Guideline 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.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Paragraph 2, Guideline G:	For Applicant
Subparagraphs 2.a-2.d:	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