



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



In the matter of:)	
)	
)	ADP Case No. 21-00425
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guidelines E, personal conduct, I, psychological conditions, and J, criminal conduct. He successfully mitigated the Guideline G, alcohol consumption and Guideline H, drug involvement and substance misuse trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On December 3, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reason (SOR) to Applicant detailing trustworthiness concerns under Guidelines E, personal conduct, G, alcohol consumption, H, drug involvement and substance misuse, I, psychological conditions, and J, criminal conduct. The action was taken under 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 on June 8, 2017.

In an undated answer to the SOR, Applicant elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's

file of relevant material (FORM), and Applicant received it on February 2, 2022. The Government's evidence is identified as Items 2 through 12 (Item 1 is the SOR). Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He did not provide a response, submit documents, or object to any of the Government's evidence. Items 2 through 12 are admitted into evidence. The case was assigned to me on May 5, 2022.

Findings of Fact

Applicant admitted all of the SOR allegations except ¶ 2.d, which he denied. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 40 years old. He married in 2002 and divorced in 2005. He does not have children. He earned his bachelor's degree in 2017. He began work for a federal contractor in April 2019. He worked at various jobs from 2013 to 2019, including working in food service, at liquor stores, retail stores and computer repair. He had long stretches of unemployment with periods of short, contract jobs from 2009 to 2013. (Item 3)

Applicant received treatment, with varying frequency, at a health and human services center, from about June 2006 to about June 2009, for Bipolar Mood Disorder. His treatment consisted mostly of obtaining free samples of medication. His mental health and substance abuse history shows he received outpatient psychological treatment and tried a myriad of medications. (Items 2, 3, 5)

In September 2020, Applicant was evaluated by a duly qualified licensed psychologist (LP) approved by the Government. Based on an interview, a review of available records, and an analysis of his current psychological results, the LP diagnosed Applicant with Bipolar II Disorder, in remission, and Alcohol Use Disorder, severe, currently in remission. He advised the LP that he was not currently abusing alcohol, but still consumed beer despite the severe difficulties it had caused him in the past. His consumption would increase during football season. He told the LP that in 2008 he had stopped drinking heavily when he moved back into his parents' house, but admitted that he continued to consume alcohol and hid his drinking from his parents while living there. Applicant did not desire to undergo formal treatment for his psychological disorders. (Items 2, 3, 4, 5)

The LP found that Applicant's psychiatric conditions and lack of ongoing treatment could ultimately lead to compromised reliability, judgment, stability, and trustworthiness. She concluded Applicant's prognosis is guarded. (Item 5)

Applicant consumed alcohol, at times in excess and to the point of intoxication, from about 1994 to at least September 2020. He continued to consume alcohol, but decreased his drinking in 2008. In his answer to the SOR, he admitted the psychological condition allegations and stated: "I have stopped drinking completely as the pandemic progressed and am open to formal treatment." There is no evidence of any alcohol-related incidents since 2005 or that he has consumed alcohol since 2020. (Items 2, 3, 4)

Applicant was arrested in about 2005 and charged with operating a vehicle while intoxicated, first offense. In his June 2019 security clearance application (SCA) he disclosed that the final disposition ordered by the court was: "Alcohol and Other Drug Abuse (AODA) assessment after an Operating While Intoxication offense. Referred to group dynamics for driver safety. Completed March of 2019, 14 years after the offense." He provided no explanation for his delay. (Items 2, 3, 5)

Applicant used marijuana from about June 1996 to at least May 2017. He was arrested in 1999 for possession of drug paraphernalia. He was found guilty, and was given a six-month suspended jail sentence, and had his license suspended. He was arrested in March 2001 for possession of drug paraphernalia and possession of marijuana. He was found guilty. He was arrested in about July 2005 for possession of drug paraphernalia. He was found guilty and was given a \$323 fine. (Items 2, 6, 10, 11)

Applicant was arrested twice in 2006 (May and August) for operating a vehicle while his license was revoked (3rd offense). He was found guilty both times and sentenced to one day in jail. (Items 2, 8, 9)

Applicant was arrested in March 2007 for possession of drug paraphernalia and possession of marijuana. He was found guilty and given a four-month jail sentences that was suspended, a six-month suspended license, and one year of probation with no use of drugs or alcohol, and to attend substance abuse treatment. (Items 2, 7)

Applicant was arrested in 2012 for obstruction of justice, or congress, or legislative, or commission. He stated in his SOR answer that he was obstructing a street that was closed by police barricades during a permitted protest. In June 2013, Applicant was arrested for possession of drug paraphernalia and possession of marijuana. He was found guilty and sentenced to five days in jail and a \$400 fine. (Items 2, 6, 12)

Applicant was interviewed by a government investigator in July 2019. During his interview, he acknowledged his past drug use. He indicated his likelihood of being involved in illegal drugs in the future was very low. He said he had switched to craft beer and was learning how to lead a more responsible life without indulging in the use of marijuana. He had moved to a new city and no longer socialized with the people he used drugs with. (Item 4)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining an applicant's eligibility for a position of trust.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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(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."

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline I: Psychological Conditions

The trustworthiness concern 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 interference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of the disqualifying conditions under AG ¶ 28, and the following is potentially applicable:

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

Applicant was evaluated in September 2020 by a duly qualified and approved by the Government LP. She diagnosed Applicant with Bipolar II Disorder, in remission, and Alcohol Use Disorder, severe, currently in remission. The LP found that Applicant's psychiatric conditions and lack of ongoing treatment could ultimately lead to compromised reliability, judgment, stability, and trustworthiness. She concluded Applicant's prognosis is guarded. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

(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 did not offer any evidence of action or treatment he may have participated in. He stated to the LP at the time of his evaluation that he did not desire to undergo formal treatment for his psychological disorder. In his more recent answer to the SOR, he said that he was now open to formal treatment, but offered no evidence of treatment he has received. None of the mitigating conditions apply.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the trustworthiness concerns for 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 trustworthiness concerns and may be disqualifying. I find the following to be potentially applicable:

(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;

(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; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant was convicted in 2005 of operating a vehicle while intoxicated and was ordered to complete an AODA assessment and group dynamics counseling. Applicant failed to complete it until March 2019. Technically, Applicant completed the court ordered requirement, and I will not consider this under the disqualifying conditions, but may consider his delay in completion when applying the mitigating conditions and in the whole-person analysis. AG ¶ 22(g) does not apply.

Applicant consumed alcohol from 1994 to at least September 2020, at times in excess and to the point of intoxication. He decreased his consumption in 2008. In September 2020 he was diagnosed with Alcohol Use Disorder, severe, currently in remission by a duly qualified Government approved LP. Applicant continued to consume alcohol after his diagnosis. In his SOR answer, provided subsequent to receiving the December 2021 SOR, he said he had stopped drinking alcohol completely. The evidence supports the application of AG ¶¶ 22(a) and 22(d).

The guideline also includes conditions that could mitigate trustworthiness concerns arising from alcohol consumption. I have considered the following mitigating conditions under 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;

(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 and 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 was diagnosed with Alcohol Use Disorder, severe, currently in remission in 2020. He declined treatment and continued to consume alcohol. He decreased his alcohol consumption in 2008. In 2020 he stopped drinking alcohol. There is no evidence of any other alcohol-related incidents after his 2005 DWI or that he has consumed alcohol since 2020. I find AG ¶¶ 23(a) and 23(b) apply.

Guideline H: Drug Involvement and Substance Misuse

The trustworthiness concern relating to the guideline 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.

AG ¶ 25 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

(a) any substance misuse; and

(c) illegal possession of a control substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana from approximately 1996 to May 2017. He was arrested in, 2001, 2007, and 2013 for possession of marijuana and possession of drug

paraphernalia. He was arrested in 1999 and 2005 for possession of drug paraphernalia. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate trustworthiness concerns. The following mitigating conditions under AG ¶ 26 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 to overcome the 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 being 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 used marijuana for an extensive period of time. During his background interview he told the government investigator that he stopped using marijuana in 2017 and was acting more responsibly. He said that he no longer associated with friends he had used it with. He said he had a low probability of using it again. Although not a definitive statement, I find since it has been five years since he last used marijuana, it is unlikely he will use it again. I find the above mitigating conditions apply.

Guideline J: Criminal Conduct

The trustworthiness concerns 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.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and 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 judgment, 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.

Applicant has a long history of violating the law. He was arrested and found guilty for possession of marijuana and drug paraphernalia in 1999, 2001, 2005, 2007, and 2013. He was arrested in 2005 and found guilty of operating a vehicle while intoxicated. He had his driver's licenses revoked, but continued to drive and was arrested and convicted twice in 2006 for operating a vehicle while his license was revoked. He was also arrested in 2012 for obstructing a street that was barricaded off by police. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially 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.

The last criminal offense alleged occurred in 2013. The evidence may support that because of the age of these offenses without additional misconduct that it is unlikely that that future criminal conduct will occur. However, the evidence supports that Applicant has a disregard for the law and repeatedly violated it, despite the minor nature of most of the offenses. He was repeatedly arrested for the same thing, possession of marijuana and drug paraphernalia and driving on a revoked license. This reflects his indifference to observing the law and taking his criminal conduct seriously. In addition, the fact that he waited 14 years to complete a requirement by the court to participate in an AODA equally shows his disregard for following rules. Applicant provided no explanation for why he repeatedly failed to follow the law. No evidence was provided to explain his conduct or remorse. In the world of public trust eligibility requirements, one must be confident that the rules are followed. Despite the minor nature of most of the offenses and passage of time, there is insufficient evidence of successful rehabilitation. Applicant conduct over the course of years, casts doubt on his current reliability, trustworthiness and good judgment. Although, AG ¶¶ 32(a) and 32(d) have some application, it is insufficient to mitigate the trustworthiness concerns raised by Applicant's conduct.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. I find the following potentially applicable:

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's alcohol-related arrest for operating a vehicle while intoxicated; use of marijuana from 1996 to 2017; numerous arrests for use of marijuana and possession of drug paraphernalia; operating a vehicle after his license was revoked, on more than one occasion, support a whole-person assessment of questionable judgment, unreliability, untrustworthiness, and unwillingness to comply with the rules and regulations. I find the above disqualifying conditions apply.

Applicant's continued use of alcohol after being diagnosed with Alcohol Use Disorder, severe does not apply as disqualifying under this guideline because his disorder is in remission and there is no evidence of him drinking irresponsibly after his 2005 DWI or after his 2020 diagnosis.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has not provided sufficient evidence to conclude that he has acknowledged his behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the factors that contributed to his conduct or to conclude it is unlikely to happen again. The analysis under Guideline J also applies under this guideline. Despite some minimal application under AG ¶ 17(a), it is insufficient to mitigate the personal conduct trustworthiness concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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 E, G, H, I, and J in my whole-person analysis.

Applicant has not met his burden of persuasion. There is insufficient evidence to overcome the trustworthiness concerns raised under Guidelines E, personal conduct, Guideline I, psychological conditions, and Guideline J, criminal conduct. Applicant has mitigated the trustworthiness concerns under Guideline G, alcohol consumption and 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 I:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.j:	Against Applicant
Paragraph 4, Guideline J:	AGAINST APPLICANT
Subparagraph 4.a	Against Applicant
Paragraph 5, Guideline H	FOR APPLICANT
Subparagraph 5.a:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge