



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



In the matter of: )  
)  
) ISCR Case No. 19-03989  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: Sarah Bardol, Esq.

09/01/2022

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline I (Psychological Conditions), and Guideline G (Alcohol Consumption). National security eligibility for access to classified information is not granted.

**Statement of the Case**

On May 24, 2016, Applicant submitted a security clearance application (SCA). On September 14, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines I and G. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

On October 19, 2020, Applicant provided a response to the SOR, and he admitted all of the SOR allegations, except SOR ¶¶ 1.h, 2.a, and 2.b. He requested a

hearing before an administrative judge, and the case was assigned to me on February 2, 2022. On June 13, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing for a video teleconference scheduled for June 30, 2022. The hearing was convened as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-8, and Applicant offered Applicant Exhibits (AE) A-K; there were no objections and all proffered documents were admitted into evidence. Applicant testified and two witnesses testified on his behalf. I held the record open until July 14, 2022, in the event either party wanted to supplement the record with additional documentation. No documents were submitted. DOHA received the hearing transcript (Tr.) on July 11, 2022.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, I make the following findings of fact: Applicant is 48 years old. He earned a bachelor's degree in 1996 in physics and mathematics, and a master's degree in 1998. He earned his doctorate in condensed matter physics in 2002. After he graduated with his Ph.D., he was hired by a federal contractor. His job title is senior research scientist. Applicant is reportedly considered a highly valued employee by his employer. In 2014, his employer permitted him to return to his home state, and set-up an approved facility for storing and processing classified information in his home office. Applicant married his spouse in 2000 and they have a daughter, age 12. (Tr. 19-20, 27-30; SOR response; GE 1, GE 4; AE E, AE F)

In March 2016, Applicant and his family became aware that he was suffering from a mental health condition. He was in a manic state and he was acting peculiar. He visited his primary care physician and was prescribed an antipsychotic medication. In April 2016, Applicant was involuntarily admitted for inpatient psychiatric hospitalization. He stayed in the hospital for six days, and he was diagnosed with Psychosis and Bipolar I Disorder, currently manic, with psychotic features and anxious distress. (SOR ¶ 1.a) He left the hospital with a different medication, Risperdal, which helped him come out of his manic state, and he was referred to a mental health professional. (Tr. 21- 25, 34-35)

Applicant received treatment from a mental health professional from May 2016 through June 2016, for his bipolar disorder. (SOR ¶ 1.b) Medical records reflect that he was advised to abstain from alcohol use. He also visited a psychiatrist from July 2016 to June 2018. (SOR ¶ 1.c) Applicant was repeatedly advised during sessions to immediately stop drinking alcohol. He did not want to follow this recommendation. He was informed that drinking any alcohol was dangerous for someone with an unstable mood disturbance. He changed his therapy treatment to another facility. In 2018, Applicant wanted to change his psychiatrist because he did not consider the medical professional a "good fit" unless his treating psychiatrist would continue his medications and not challenge his right to drink alcohol. Applicant also started therapy in about July 2016, at a different clinic. He has continued treatment at this facility to at least June

2022. (SOR ¶ 1.d) Applicant expressed some concerns about his alcohol use during therapy. (Tr. 25-27, 34-35; GE 5, GE 6; SOR response, AE A, AE K)

In April 2017, following a suicide attempt, Applicant was admitted for inpatient psychiatric hospitalization. He was diagnosed with suicide ideation and severe depressed Bipolar I Disorder without psychotic features. (SOR ¶ 1.e) Applicant's DOD security clearance was suspended following this hospitalization, and a background investigation was initiated. All classified material at his home office was returned to his employer. (Tr. 28-31,

Applicant was admitted in June 2018 for inpatient psychiatric hospitalization for a condition diagnosed as Bipolar Affective Disorder, currently manic, moderate. (SOR ¶ 1.f) He tested positive for alcohol at the time of his admission. His wife reported that he appeared to be in a manic phase, and she was particularly concerned about his increased consumption of alcohol. The medical records report that from March to June 2018, Applicant was drinking 4 to 5 alcoholic drinks per day. He left the hospital against medical advice. He later told his therapist he was "held against his will" and was angry with his wife for taking him to the hospital. (Tr. 39-43; AE B, AE J; GE 4, GE 5, GE 8; SOR response)

In July 2018, Applicant started receiving mental health treatment from a different doctor who is board-certified in psychiatry. His psychiatrist stated in a June 2022 letter that beginning in 2019, Applicant's symptoms have remained stable with medication management and psychotherapy. He is compliant with his treatment plan and has not suffered any manic episodes since 2018. The treatment records reflect that his current psychiatrist "strongly encouraged" Applicant to refrain from alcohol use. (Tr. 39-43; AE B, AE J; GE 4, GE 5, GE 8; SOR response)

The DCSA CAF requested Applicant undergo a mental health evaluation after he had been hospitalized for psychiatric issues in 2016, 2017, and 2018. Applicant agreed to the evaluation, and on November 15, 2019, he met with a licensed psychologist. The psychologist reviewed his medical records, his security investigation, and she conducted a clinical interview with Applicant. She also administered the Structured Clinical Interview for Diagnostic and Statistical Manual for Mental Disorders 5<sup>th</sup> Edition (SCID-5-CV), Beck Depression Inventory (BDI-II), Beck Anxiety Inventory (BAI), Minnesota Multiphasic Personality Inventory – 2 – Restructured Form (MMPI-2-RF), Mood Disorder Questionnaire (MDQ), and the Alcohol Use Disorders Identification Test (AUDIT). The combined information was used for her assessment. (GE 3)

The clinical psychologist noted that Applicant's scored very high on the AUDIT test with a score of 15; a score of 8 or more is indicative of harmful drinking behavior in men. She diagnosed Applicant with an Alcohol Use Disorder, mild. He reported mild depression starting in his early 20s and increasing in severity and being intermittent since that time. He last experienced a depressive episode in 2017. His symptoms appeared to be managed well with his current psychotropic medications. He also engages in regular outpatient mental health counseling to manage his Bipolar I

Disorder. Despite the fact that he was functioning well at the time of the evaluation, the mental health professional reported that there is a moderate to high probability that Applicant will experience another manic/hypomanic or depressive episode in the future. His prognosis is guarded given the evidence of his three most recent hospitalizations and due to the chronic nature of Bipolar I Disorder; the high probability of reoccurrence of manic/hypomanic and depressive episodes; and his problematic use of alcohol. She also noted the interactive effects of alcohol used with his listed psychotropic medications was worrisome. Applicant admitted to drinking more than intended at least one time per month. His current use of alcohol could have a negative effect in the management of his Bipolar I Disorder. (GE 3)

The clinical psychologist endorsed Applicant's continuation of current psychiatric treatment and mental health counseling. She recommended that he reduce and preferably abstain from all alcohol use, especially since he is taking psychotropic medications. His current Bipolar I Disorder and Alcohol Use Disorder appear to make him vulnerable to blackmail, pressure or coercion, and therefore concluded that Applicant is an unsuitable candidate for a security clearance. (GE 3)

Applicant admitted that during some of his counseling sessions discussions concerning his alcohol use had been initiated. During his manic episodes he drank alcohol more frequently, and at times daily. He abstained from drinking alcohol after his 2016 hospital discharge, as his treating doctor at that time, advised him to stop. He returned to drinking alcohol in early 2018, when he was in the beginning stages of a manic episode. After his discharge from the hospital in 2018, he was again advised to abstain from using alcohol. Applicant testified that he did not abstain but chose instead to moderate his use of alcohol. He currently drinks alcohol on a regular basis, usually 6 to 8 drinks during the week. He testified that his current use of alcohol does not cause a problem in his ability to protect classified information. He also acknowledged, after receiving the SOR in September 2020, his awareness of the Government's concern about his current use of alcohol against medical advice. Even though he has been advised by multiple medical professionals to abstain from using alcohol, it is his intention to continue to limit his use of alcohol in the future. (GE 6; Tr. 27, 32-33, 37-49)

Applicant provided employee performance evaluations covering 2017, 2018, and 2019. All of his assessments described him as a valued employee and critical contributor. He is viewed as one of the leaders in the industry for innovative ideas and mathematical approaches to complex physics. Applicant's endeavors support the needs of the customer and organization. (AE I)

The technical director at his employment and a former co-worker appeared as witnesses for Applicant. They both knew him when he was first hired by his current employer in 2002. Both witnesses testified that Applicant is brilliant and an exceptional asset to the company. They testified that they were aware of his mental health issues, but overall, they believe he is reliable and trustworthy, and recommended that his security clearance be reinstated. During cross examination, the witnesses were asked if they would be concerned to discover that Applicant was not complying with his

psychiatrist's recommendation; specifically, if he was told to abstain from alcohol but he continued to consume it. Both witnesses agreed that Applicant should be following his doctor's orders. (Tr. 67-91)

## **Policies**

When evaluating an applicant's suitability for a security clearance, 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 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, 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 I: Psychological Conditions**

AG ¶ 27 expresses the security concern for psychological conditions:

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 inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The medical diagnoses and records in evidence raised the following Psychological Conditions Disqualifying Conditions under AG ¶ 28:

- (a) behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;
- (c) voluntary or involuntary inpatient treatment; and
- (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

The SOR alleges psychological conditions security concerns based on Applicant’s history of psychiatric hospitalizations and his current use of alcohol against medical advice. Additional psychological concerns were developed from the November 15, 2019 psychological evaluation, by a clinical psychologist who diagnosed Applicant with Bipolar I Disorder and Alcohol Use Disorder, mild. Due to the chronic nature of his

bipolar condition, there is a high probability of reoccurrence of manic/hypomanic and depressive episodes. She found it troubling that he continued using alcohol while taking psychotropic medications. Applicant has a history of excessive alcohol use during manic episodes, and she expressed concern about his current alcohol use and the ability to effectively treat his bipolar disorder. Based on her overall assessment, she found that Applicant had a condition which could impair his judgment, reliability, and trustworthiness.

I considered the following mitigating conditions under AG ¶ 29:

(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 has indications of emotional instability; and

(e) there is no indication of a current problem.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows: [adjust margins]

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in Egan, supra. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Beginning in 2016, Applicant became aware that he suffers from Bipolar I Disorder. In 2016, 2017, and 2018, he was admitted into hospitals, both voluntary and involuntary, for psychiatric issues. Applicant was advised by medical professionals to abstain from alcohol. He stopped consuming alcohol in 2016, but he resumed using alcohol in 2018 during the beginning stages of a manic episode. According to the medical records, he was drinking 4 to 5 drinks daily.

Applicant acknowledged multiple warnings given by medical and mental health professionals that alcohol use is not compatible with treating his bipolar disorder, which has a high probability of recurrence or exacerbation. Despite this information, he has chosen to drink alcohol on a regular basis, usually 6 to 8 drinks during the week. I took into consideration that Applicant is a valued employee by his employer, and he is compliant taking his medications and attending therapy sessions. Overall, I find that he has failed to follow critical medical advice and he is not fully compliant with his treatment plan. His continued use of alcohol while receiving treatment and medication for his mental health condition may impair his judgment, stability, and reliability. The psychological conditions security concerns are not mitigated.

### **Guideline G: Alcohol Consumption**

AG ¶ 21 expresses the alcohol consumption security concern as follows:

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 lists one condition that could raise a security concern and may be disqualifying in this case including:

(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.

Beginning in 2016, Applicant has been advised by medical and mental health professionals to abstain from using alcohol. In November 2019, he was diagnosed with Alcohol Use Disorder, mild. He continues to consume 6 to 8 drinks weekly. AG ¶ 22(d) is established.

AG ¶ 23 provides conditions that could mitigate security concerns including:

(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 has a history of alcohol consumption and he drinks more frequently during manic episodes. Beginning in 2016, Applicant has been advised by medical and mental health professionals to abstain from using alcohol while undergoing treatment for a bipolar disorder. In November 2019 he was diagnosed with Alcohol Use Disorder, mild. While Applicant claims that he now drinks in moderation while his mental health treatment is on-going, he did not provide sufficient evidence to show that his past excessive use of alcohol occurred under circumstances that are unlikely to recur, or that it no longer casts doubt on his current reliability, trustworthiness, or judgment. Alcohol consumption security concerns are not mitigated.

### **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 the 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.

Applicant is doing well in his current treatment and he is compliant in the use of prescribed psychotropic medications for his Bipolar I Disorder. His mood is currently stabilized. He is also a highly-valued employee capable of complex work that is beneficial to DOD's mission.

The evidence against mitigation is more persuasive at this time. Applicant is currently noncompliant with a consistent component of his treatment plan - to abstain from using alcohol. He is taking prescribed medicines that are not compatible with alcohol use, and he drinks despite noted medical concerns that using alcohol may agitate his stabilized mood. I am not convinced that past psychological issues or excessive use of alcohol are unlikely to recur. As such, the record evidence leaves me with questions and doubts about his eligibility and suitability for a security clearance.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more time without any conduct of security concern, and a longer track record of behavior consistent with his obligations, he may be able to demonstrate persuasive evidence of his security clearance worthiness. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate the psychological conditions and alcohol consumption security concerns.

### **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.h:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a, and 2.b:	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 security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge