



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



In the matter of: )  
)  
) ISCR Case No. 21-02560  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

11/22/2022

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**Decision**

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HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions) and Guideline G (Alcohol Consumption). Applicant mitigated the Government's security concerns under Guideline I and Guideline G. Applicant has met his burden to establish that it is clearly consistent with the interests of national security that he maintain his access to classified information. Eligibility for continued access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on March 26, 2020. On February 4, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline I (Psychological Conditions) and Guideline G (Alcohol Consumption). The CAF acted under Executive Order (Exec. Or.) 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)

promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on February 22, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on June 27, 2022. On June 27, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 8, 2022, and provided a Response to the FORM, Applicant Exhibit 1 (AE1), a letter from his treating psychiatrist, hereafter Doctor T, marked AE 2, and a letter from his pain management doctor, hereafter Doctor S, marked AE3. The Government did not object to their admission into evidence. The case was assigned to me on October 14, 2022.

The SOR and the answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 6 and AE1, AE2, and AE3 are admitted into evidence without objection.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a-1.b and denied the cross-allegation SOR ¶ 2.a. His admissions in his answer are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is a 39-year old senior systems administrator with a federal contractor. He currently holds a top secret clearance and eligibility for access to sensitive compartmented information, granted in 2014, and he has held various clearances dating back to 2008. He received a bachelor's degree in 2008. He has been married for 15 years and has three children from the marriage. (FORM Item 3.)

Applicant served on active duty in the Army National Guard from 2004 through 2015. He deployed overseas in the late summer of 2010. In early 2011, he sustained injuries while deployed in a combat zone and was medically evacuated to Europe. The medical staff determined he was unable to return to combat. He returned to the United States to undergo surgery. He returned to duty, without a medical board in July 2012. In September 2013, a medical board was held, and he was subsequently medically retired in 2015. Since sustaining his injuries, he has undergone over 30 surgeries. (FORM Item 4 at 2.) The last surgery was in 2016. (FORM Item 2 at 4.)

Because of the constant pain associated with his injuries and the numerous surgeries, Applicant was entered as a patient in a pain management clinic in 2012. He sought assistance from behavioral health at a military base in 2013. (FORM Item 6 at 3.) In 2014, a psychologist diagnosed him with a number of things. This diagnosis is alleged in SOR ¶ 1.b: Somatic Symptom Disorder (complex with predominant pain); Major depressive disorder, recurrent (severe without psychotic features); Anxiety (Not

Otherwise Specified); Opioid Dependence; ADHA (primarily inattentive type); and Antisocial personality traits. (FORM Item 6 at 11.) The evaluating psychologist identified a number of prognostic indicators, antisocial personality disorder (ASPD), multiple Axis 1 disorders, chronic pain, medically unexplained symptoms, poor sleep, and possible tendency towards somatization. (FORM Item 6 at 10.) The 2014 psychologist noted his social support network and encouraged him to seek therapy. (FORM Item 6 at 10.)

In 2021, at the CAF's request, a psychologist evaluated Applicant. This diagnosis is alleged in SOR ¶ 1.a: Features of Antisocial Personality Disorder (prominent lack of empathy, history of aggression); Unspecified Trauma-Related Disorder (minimal intrusive symptoms, no avoidance); Depressive Disorder Due to Another Medical Condition (chronic pain); and Alcohol Use Disorder, mild (binges). (FORM Item 4 at 7.) The psychologist speculated that the positive prognostic indicators she found, stable family life and quarterly visits with a psychiatrist, may be outweighed by his opioid dependence, episodic alcohol abuse, and indications of an unscrupulous attitude toward truthfulness. (FORM Item 4 at 7.) She noted he responded to her emails politely and promptly and took the first available appointment. She identified no signs of anxiety and he responded to questions in a relaxed manner with a clear and logical thought process, often providing more detail than necessary to answer a particular question. (FORM Item 4 at 3.)

Applicant has been under the care of his current psychiatrist, Doctor T, since 2018. He notes she is treating him for "ASPD, PTSD, ADHD, and Chronic Pain Syndrome with associated wave of depression." (FORM Item 2 at 5.) Doctor T states she has been treating him for persistent issues of anxiety, insomnia, and inattention. She states his diagnosis is Attention Deficit Hyperactivity Disorder, Inattentive type (F90.0), and Unspecified Anxiety Disorder (F41.9). She concludes she does not believe he has a personality disorder or an alcohol use disorder. (AE2 at 1.)

Doctor T addresses each diagnosis from the 2021 evaluation. (AE2 at 1.) She states Applicant lacks all the criteria for an antisocial personality disorder. She notes, while he does have a sense of detachment from others, these are skills necessary to carry out military orders and to keep himself and others safe. Doctor T cites his support network of family and the feelings of warmth towards his wife and children, as well as the value he places on his professionalism and being part of a team. She identifies as a strength, his ability to detach from his own life and focus on his work and cites favorably the absence of evidence that this trait has ever been brought up as a professional liability. Doctor T noted based on her professional experience people working in technical fields, such as engineering or other professions involving computer programming or job descriptions that require an analytic over an emotional skill set, may demonstrate as "lower in warmth than others." (AE 2 at 1.)

Doctor T addressed the alcohol abuse diagnosis. She cited his medical record and her four years of treatment observation. She highlighted the fact that any excessive alcohol use was several years ago, when he was experiencing severe insomnia and used excessive alcohol in order to sleep. She found no pattern of problematic alcohol use, other than this specific time period. (AE2 at 1.) She explained he has been on a stable

combination of prescription medication, which allows him to sleep well and consistently function. She concludes his statements about limited use of alcohol are accurate because he has no alcohol-related arrests or medical issues that would cause alcohol to be diagnosed as a clinical concern. Additionally, she notes he has never failed a drug screen and has been taking controlled medications as part of his regimen for many years. (AE2 at 1.)

Doctor T concluded Applicant's "presenting complaints have been worked out with a combination of appropriate pharmacotherapy and supportive psychotherapy." She notes he has been fully compliant with his treatment plan, including taking his medications as prescribed, passing urine drug screens, and allowing her to share his medical records and to communicate with all of his other providers. (AE 2 at 2.)

Applicant denied the alcohol allegation, SOR ¶ 2.a. He acknowledged during the 2012-2014 time-period he had "used alcohol as a crutch to numb the effects of [his] chronic pain, but never while on duty and in the confinements of [his] home." (FORM Item 2 at 5.) Given his injuries, he has been treated by an advanced pain therapy clinic and required to enter into an opioid contract. His pain management doctor, Doctor S, has treated him for 10 years. Doctor S noted he had been compliant with the clinic's opioid therapy policies and had not demonstrated aberrant behaviors. His urine drug screens have been normal, as have his prescription monitoring reports. (AE3.)

Applicant emphasizes the fact that the record reflects he has never been accused or charged with any violent crimes or any crimes at all. (AE1.) He states the main reason he sought therapy was to make his family happy and safe. (FORM Item 2 at 5 and FORM Item 6 at 10.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline I, Psychological Conditions**

The concern under this guideline 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 inference 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 security concerns under AG ¶ 28. The following disqualifying condition is applicable in this case:

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

The following mitigating conditions under AG ¶ 29 are applicable:

(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; and

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

AG ¶ 29(a) is established. Applicant's complaints have been worked out with a combination of appropriate pharmacotherapy and supportive psychotherapy. His treating doctors state he is compliant with his treatment program.

AG ¶ 29(b) is established. Applicant is voluntarily participating in a treatment program, receiving counseling and medication. He has been fully compliant with his treatment plan, which includes regular appointments, taking his medications as prescribed, and passing urine drug screens. He has allowed his doctors to share his medical records and to communicate with all of his other providers.

AG ¶ 29(c) is established. He provided recent evidence from a medical professional regarding his mental and behavioral health.

AG ¶ 29(e) is established. Applicant's complaints have been worked out with a combination of appropriate pharmacotherapy and supportive psychotherapy. There is no record of incidents of misconduct, workplace issues, or security violations.

## **Guideline G, Alcohol Consumption**

The security concern for alcohol consumption is set forth 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 disqualifying conditions are applicable in this case:

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

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist; psychiatrist, or licensed clinical social worker) or alcohol use disorder.

SOR ¶ 2.a cross-alleges the Guideline I concerns under Guideline G. Applicant's 2021 CAF psychological evaluation is the basis for SOR ¶ 1.a. In this evaluation, he acknowledges binge drinking in the 2012 to 2014 time period. AG ¶ 22(c) applies. He was diagnosed with a mild alcohol use disorder during this evaluation. AG ¶ 22(d) applies to that diagnosis. SOR ¶ 1.b does not allege alcohol consumption. The part of SOR ¶ 2.a that cross-alleges SOR ¶ 1.b is concluded for Applicant.

The following mitigating conditions under AG ¶ 23 are 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

(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.

AG ¶ 23(a) is established. Applicant's period in question was limited to a brief window when his medical treatment protocols were being established. His treating

doctors have actively monitored him for the past ten years and no incidents have occurred.

AG ¶ 23(b) is established. Applicant acknowledges the period in question and provided statements from his treating doctors showing he has overcome this problem. The fact he is tested regularly for substances and has had no incidents demonstrates a clear and established pattern of modified consumption in accordance with treatment recommendations.

AG ¶ 23(c) is established. Applicant has been participating in mental health counseling and subject to substance abuse monitoring for almost ten years. His psychiatrist, Doctor T, found no pattern of problem alcohol use other than during the one specific time period. She concludes his statements about limited use of alcohol are accurate because he has no alcohol-related arrests or medical issues that would cause alcohol to be diagnosed as a clinical concern. Additionally, she notes he has never failed a drug screen and has been taking controlled medications as part of his regimen for many years.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines I and G in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. The written record supports his actions and statements. He held a security clearance during his active duty service, apparently without incident. He has 10 years of documented successful treatment from the doctor monitoring his medications and his treating psychiatrist for the past four years concluded he does not have a personality disorder or alcohol abuse disorder. Finally, the absence of any negative incident in the



record is compelling and reflects his compliance with his program of pharmacotherapy and supportive psychotherapy.

After weighing the disqualifying and mitigating conditions under Guidelines I and G, and evaluating all the evidence in the context of the whole person, I conclude Applicant has met his burden to establish he has mitigated the security concerns raised by his psychological conditions and alcohol consumption. Eligibility for continued access to classified information is granted.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline I:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale  
Administrative Judge