DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 20-00559
	)	
Applicant for Security Clearance	)	

Appearances

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

02/24/2023

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Decision

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Curry, Marc E., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines K (handling protected information), M (used of information technology), G (alcohol consumption), and E (personal conduct). Clearance is denied.

Statement of the Case

On March 12, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudicated Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the National Security Adjudicative Guidelines (AG), effective June 8, 2017. In an undated response, Applicant admitted all of the allegations except subparagraphs 1.b and 1.c, and requested a hearing. On June 2, 2022, the case was assigned to me, and on September 27, 2022, a notice of video teleconference hearing was issued, scheduling the case for October 17, 2022.

The hearing was held as scheduled. I received ten government exhibits, marked, and incorporated into the record as Government Exhibits (GE) 1 to 10. At the conclusion of the hearing, I left the record open at Applicant's request to allow him the opportunity to submit additional exhibits. Within the time allotted, he submitted 11 exhibits that I incorporated into the record as Applicant Exhibits (AE) A to AE K. The transcript (Tr.) was received on October 27, 2022.

Findings of Fact

Applicant is a 37-year-old married man with two pre-teen children. He has a college degree in finance and a master's degree in business administration. (Tr. 13) He has been working for the same employer, a defense contractor, since 2007. (GE 1 at 16) He has held a security clearance since 2010. (Tr. 28)

Applicant is highly respected on the job and in the community. Per a 2019 performance review, he displays leadership skills daily and has separated himself from his peers by tailoring his approach to his audience. (AE D at 2) According to a former coworker, Applicant is a "valued member of the . . . team and could always be relied upon as a voice of reason on complex issues." (AE G) A neighbor describes him as "extremely reliable and a person of great integrity." (AE H) Since 2017, his bi-annual ratings have been either "top performer," or "excellent performer." (AE B) He has earned several promotions during his career. (Tr. 54; AE C)

Between 2009 and 2010, one of Applicant's coworkers, a friend, left the job to start a private consulting business. (GE 6) He asked Applicant to provide him with some proprietary information, explaining that it would be helpful for his new business. (GE 6) Applicant obliged, printing the document with the proprietary information from his corporate computer system, and giving it to his friend. (Tr. 19) Applicant knew this was against company policy. (Tr. 34) The proprietary information was unclassified and contained "basic, statistical information." (Tr. 19) Applicant did not inform his employer of this lapse until he took a polygraph examination several years later in 2016. (GE 6; Tr. 38)

In 2010, Applicant's job changed from financial analyst to financial planner. For this new assignment, he was moved from an office in a sensitive compartmented information facility (SCIF) to an unclassified office. Applicant needed a monitor for his new office and asked an employee in the information technology (IT) office if he could take the monitor he had used in the SCIF with him. (GE 5 at 3) The IT employee told him it was okay. Applicant never checked with anyone from the security office before removing the monitor. (GE 5 at 3) Applicant then returned to the SCIF and took the monitor, removing the classified label on it while in the process. (GE 5 at 3) He was never reprimanded for this incident.

In early 2015, Applicant inadvertently brought his cell phone into a SCIF. When the security violation occurred, he was carrying balloons from an unclassified area to the SCIF for a coworker's bridal shower and forgot to check in his cell phone before entering. He realized his mistake in about 15 seconds after entering the SCIF, turned around, and

placed the phone in a locker outside the SCIF, as required. (GE 5 at 3; Tr. 23, 44) Hehas inadvertently walked into a SCIF with his personal cell phone on four to five occasions over three years. Each time, he has promptly realized his error and stepped back outside to place the cell phone in a locker. (Tr. 49) He does not recall if he ever reported any of these incidents to the company facility security officer. (Tr. 49) Applicant's current supervisor has no reservations about his ability to handle classified information. (AE F)

Applicant has been consuming alcohol, at times to intoxication, since 2009. (Answer at 3) His peak years of alcohol consumption were the mid-2010s, when he was drinking one to three drinks each weeknight, five drinks each day on weekends, and drinking to the point of blacking out two to three times per year. (GE 5 at 4, Tr. 52)

In 2009, Applicant was cited for possession of an alcoholic beverage in public. (GE 5 at 4) The citation was later dismissed.

Applicant was diagnosed with moderate alcohol use disorder in 2016, and again, in 2019. (Tr.54) Neither evaluation concluded that he should abstain from alcohol use entirely.

Applicant's alcohol use has been steadily decreasing since 2016, Now that he is married, has children, and lives in the suburbs, he is preoccupied after work with taking his children to extracurricular activities, rather than drinking alcohol. (GE 7; Tr. 56) Sometime during the past four years, Applicant was diagnosed with high blood pressure. (Tr. 59) Recognizing the harm that excessive alcohol use can cause for people with high blood pressure has also compelled Applicant to reduce his alcohol consumption. (Tr. 59)

By the time Applicant had met with a licensed alcohol clinician in 2019, he was drinking approximately 15 drinks per week. According to the clinician, this constitutes heavy drinking. (GE 3 at 4)

Applicant uses alcohol "as a stress coping mechanism." (Tr. 57) Moreover, he acknowledged that alcohol use occasionally has a negative impact on his interpersonal relationships. Since April 2021, he has been working with a clinical therapist to address his concerns about alcohol consumption. (AE A) He continues to consume 15 alcohol drinks per week. (Tr. 59)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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. 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 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 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. Section 7 of Executive Order 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d) The factors under AG ¶ 2(d) are as follows:

> (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.

Analysis

Guideline K: Handling Protected Information

Under this guideline, "deliberate or negligent failure to comply with rules and regulations for handling protected information --- which includes classified and other sensitive government information, and proprietary information --- raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern." (AG ¶ 33) Applicant's unauthorized transfer of a document containing proprietary information to a former employee of his company triggers the application of AG ¶ 34(a), "deliberate or negligent disclosure of protected information to unauthorized persons, including but not limited to, personal or business contacts, the media, or persons present at seminars, meetings, or conferences." Applicant's removal of classified labeling from a computer monitor, and subsequent use of the monitor in an unclassified area, together with his periodic entry into a SCIF with his personal cell phone, triggers the application of AG ¶ 34(g), "any failure to comply with rules for the protection of classified or sensitive information."

Applicant inadvertently walked into the SCIF where he worked with his cell phone approximately four times in ten years. Each time, he promptly realized his error before arriving at his desk, and turned around to leave the SCIF to place his cell phone in an outside locker. At least one of the episodes happened under unusual circumstances, as his hands were full of a bunch of balloons he was bringing into the SCIF for a bridal shower. Under these circumstances, "so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," AG ¶ 35(a) applies. I resolve subparagraph 1(b) in Applicant's favor.

Conversely, intentionally providing unauthorized proprietary information to an ex-employee of the company is an extraordinarily serious example of mishandling protected information. In addition, although Applicant's removal of a classified label from a monitor and his transport of the monitor from a SCIF to an unclassified area was not as egregious as the former behavior, it is, nonetheless, a serious breach of his responsibility to properly handle classified media because he did so without first obtaining approval from his company's security office.

Both episodes occurred more than ten years ago. Since then, Applicant has received good evaluations from his employer, and has steadily received promotions. This positive evidence, however, is insufficient to outweigh the nature and seriousness of Applicant's mishandling of protected information.

Guideline M: Use of Information Technology

Under this guideline, "failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability

to property protect sensitive systems, networks, and information." (AG ¶ 39) By deliberately printing a document containing protected information from his work computer system and giving the document to a former coworker, Applicant triggered the disqualifying condition set forth under. AG ¶ 40(f), "introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized." Applicant's conduct is disqualifying under this guideline for the same reasons that it is disqualifying under the handling of protected information guideline, as discussed above. No mitigating conditions apply

Guideline G: Alcohol Consumption:

Under this guideline, "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 ¶ 21) Applicant has a history of overconsumption of alcohol. In 2019, a therapist diagnosed him with moderate alcohol use disorder. Despite this diagnosis, he continues to drink heavily. Under these circumstances, the following disqualifying conditions under AG ¶ 22 apply:

> (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnoses 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) of alcohol use disorder.

The following mitigating conditions are potentially applicable 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; and
>
> (c) the individual is participating in counseling or a treatment program, has no history of treatment and relapse, and is making satisfactory progress in a treatment program.

Applicant contends that his changed lifestyle as a father to young children, and his concern about his high blood pressure have resulted in decreased alcohol consumption. Also, he has been working with a therapist. Conversely, he continues to drink 15 drinks per

week, and acknowledges that he drinks alcohol to cope with stress. Consequently, although his acknowledgment of his drinking problem, his changed lifestyle, and his reduced alcohol consumption are sufficient to trigger the partial application of the aforementioned mitigating conditions, none of them apply entirely because Applicant is still drinking 15 alcohol beverages weekly and continues to drink alcohol as a stress coping mechanism. Under these circumstances, I conclude Applicant has failed to mitigate the alcohol consumption security concerns.

Guideline E: Personal Conduct

Under this guideline, "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 or sensitive information." (AG ¶ 15) Applicant's reproducing and sharing of proprietary information for an unauthorized individual triggers the application of AG ¶ 16(d)(1), "untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information." Applicant's conduct remains a security concern under guideline for the same reasons as set forth in the guidelines discussed previously. No mitigating conditions apply.

Whole-Person Concept

The possibility of recurrence of the mishandling of protected information is exacerbated by Applicant's drinking problem, as his heavy drinking could make him prone to mistakes in judgment. Upon considering this case in the context of the whole-person concept, I conclude that Applicant has failed to mitigate the security concerns.

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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 K:	AGAINST APPLICANT
Subparagraph 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a – 2.d:	Against Applicant
Paragraph 3, Guideline E:	AGAINT APPLICANT
Subparagraph 3.a:	Against Applicant

Paragraph 4, Guideline M:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry
Administrative Judge