



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



In the matter of:)	
)	
)	ISCR Case No. 22-00469
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Alan V. Edmunds, Esquire

March 3, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on February 5, 2021. On April 1, 2022, the Department of Defense (DoD) Consolidated Adjudications Facility issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline G (Alcohol Consumption) and Guideline I (Psychological Conditions). The action was taken under Executive Order 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 effective within DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on May 26, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 22, 2022. The case was assigned to me on July 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on August 12, 2022 scheduling the hearing for September 30, 2022. Applicant's counsel requested a continuance due to a hurricane evacuation order in his area. I granted the continuance. On November 2, 2022, DOHA issued a second Notice of Video Teleconference Hearing. I convened the hearing as rescheduled on December 7, 2022. Department Counsel offered seven exhibits marked as Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant's counsel offered nine exhibits marked as Applicant Exhibits (AE) A through I, which were also admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 14, 2022. (Tr. at 12-17.)

Findings of Fact

Applicant is 62 years old, divorced, and has three adult children. He earned a bachelor's degree in 1989. He has worked as an engineer for his security clearance sponsor since September 2020. Applicant has held a secret clearance for most of the period from 1992 to the present. He seeks to retain his security clearance eligibility in connection with his employment. (Tr. at 13-15; GE 1 at Sections 2, 12, 13A, 17, 18, and 25, AE E.)

Paragraph 1 - Guideline G, Alcohol Consumption

The Government alleged that Applicant is ineligible for a security clearance because he has a long history of excessive alcohol consumption and he failed to follow treatment advice after he was diagnosed with alcohol use disorder (severe). In his Answer Applicant admitted SOR ¶¶ 1.a through 1.d and 1.f and 1.g, and he admitted in part and denied in part SOR ¶ 1.e. He provided additional information to clarify his admissions to SOR ¶¶ 1.f and 1.g.

The details of each of the SOR allegations and related record evidence is as follows:

SOR ¶ 1.a 2007 arrest and charge for Driving Under the Influence - Alcohol. Applicant has little recollection of what happened the night of his arrest aside from waking up in the county jail's "drunk tank." In an interview in connection with a prior security clearance investigation, he disclosed that he hit a pedestrian in an intersection. He told the investigator that there were no injuries. He pled no contest to Driving Under the Influence - Alcohol (DUI) and was sentenced to five years of probation. (Tr. at 15, 22-23; GE 1, Sections 22, 24; GE 3 at 25; GE 4 at 1-2; GE 5 at 3.)

SOR ¶ 1.b March to May 2010 outpatient counseling for condition diagnosed as alcohol dependence. Applicant was terminated from a job in early 2010 for showing up for work intoxicated. He voluntarily admitted himself into this two-month outpatient program. He fully complied with the conditions of the program. Appellant started drinking alcohol when he was in his forties. He started drinking more heavily in the 2007 to 2010 period. In the outpatient program, he was diagnosed as alcohol dependent (Tr. at 15-16, 28-29; GE 3 at 9, 25.)

SOR ¶ 1.c September to October 2010 inpatient treatment for a condition diagnosed as alcohol dependence. Applicant's marriage "fell apart" in 2010 when he and his wife separated, and the stress following the breakup caused Applicant to relapse and start drinking excessively again. He voluntarily admitted himself into a 30-day inpatient treatment program. (Tr. at 16-17, 29-33; GE 1, Section 24.)

SOR ¶ 1.d Between 2010 and June 2015, multiple periods of inpatient and outpatient treatment for a condition diagnosed as alcohol dependence. Applicant had periods of sobriety after his 2010 inpatient treatment. The longest was about 18 months. He had several relapses. Sometimes he voluntarily entered an inpatient treatment program for about seven days, and on other occasions he decided to pursue outpatient treatment. He stated that he was not taking his condition seriously and did not realize that he had crossed the line between being a social drinker into being an alcoholic. He did not appreciate the seriousness of the disease of alcoholism. Applicant and his wife divorced in January 2014. (Tr. at 17; 32-33; GE 1, Sections 17, 24.)

SOR ¶ 1.e May 2014 arrest and charges with DUI and Failure to Stop after an Accident. Applicant was arrested and charged with DUI and Failure to Stop, as alleged in the SOR. He denied, however, the allegation that he was sentenced to four days in jail. He testified that after his arrest he was put in the "drunk tank" overnight until he regained his sobriety and then was released. The FBI report and the local sheriff's report in the record support the allegation that he was sentenced to four days in jail. He described the incident as a relapse and after drinking alcohol he drove to a store to buy groceries. He had a minor accident and, due to the nature of the incident, he pulled his car into a parking space to get his car off the road. The police treated his actions as a "hit and run." This charge was eventually dropped. He testified that the accident was caused by the careless driving of the other party involved, but Applicant took full responsibility for the accident because he was intoxicated. His BAC was 0.19%. He plead guilty to DUI and was sentenced to five years of probation. He believes that the reference in his criminal record to five days in jail may have been a suspended sentence. He was also sentenced to attend an 18-month alcohol education program. He fully complied with the terms of his sentence. He voluntarily entered an outpatient treatment program, as described in SOR ¶ 1.d, above. (Tr. at 17-18, 23, 33-39; GE 1, Sections 22, 24; GE 2 at 5; GE 3 at 6, 24; GE 4 at 3; GE 5 at 5.)

SOR ¶ 1.f August to September 2017 inpatient treatment for conditions diagnosed as Alcohol Use Disorder (Severe) and Depression. Applicant testified that his depression was not long-term, but rather was “incidental to the alcohol.” He was depressed by his living conditions in a desert area that was not agreeable to him and his lingering negative feelings following his divorce. He was experiencing stress related to his job and family situation. His abuse of alcohol also acted as a depressant. He voluntarily entered into a 30-day inpatient program. He testified that at this point, his longest period of sobriety was sixteen months, starting in January 2016 and ending in May 2017. He was discharged with a diagnosis of Substance Abuse Disorder – Alcohol, Severe with a co-occurring mental disorder of Depression. He was given a guarded prognosis. After he left the treatment facility in September 2017, he relocated to another city and lived in a shared community home that was dedicated to alcohol-free living. He did well there until 2019 when he had a relapse and lost his job due to his failure to contact his supervisor and to show up for work. (Tr. at 18-19, 42-50; GE 1, Section 24; GE 2 at 2-3; GE 3 at 9; GE 7 at 7-8.)

SOR ¶ 1.g January to February 2021 inpatient treatment for conditions diagnosed as Alcohol Use Disorder (Moderate or Severe) and Major Depressive Disorder (Single Episode, Severe). Applicant had a “short relapse” in January 2021. He voluntarily checked himself into an inpatient program. He was intoxicated at the time, and his BAC measured at 0.183%. He only intended to stay long enough to detox. The SOR allegation stated that he left the treatment facility before completing his Continuing Recovery Discharge Plan. He explained that was true, but his early departure from the program was the result of a misunderstanding. Due to his intoxicated condition at the time he entered the program, he did not understand that he was expected to remain at the facility for 30 days. He could not stay there for more than a brief period because that would have kept him away from his new job. He stayed for about five days; long enough, in his view, to safely detox from his condition. The treatment facility’s discharge summary lists Applicant’s diagnosis on arrival was Alcohol Intoxication with moderate or severe use disorder. The summary reflects that he made no progress in treatment and left the program before any planning could be done or any referrals provided. Applicant failed to list this treatment in his February 5, 2021 e-QIP because he was tired of filling out the e-QIP and he felt that the treatment was not significant, rather it was just a “quick detox.” (Tr. at 19, 51-58, 66; GE 3 at 10; GE 6 at 1, 18.)

The last time Applicant drank alcohol was in July 2022. He purchased alcohol and consumed it at his residence. He was not fully engaged in Alcoholics Anonymous (AA) at the time. He described his attendance at AA meetings prior to July 2022 as “spotty.” As a result of his relapse, he was required to renew his sobriety date at AA. On May 26, 2022, Applicant signed a statement “under penalty of perjury under the laws of the United States that he intended to never drink alcohol again and never to drive after drinking. His statement also expressed his understanding that “any inappropriate involvement with alcohol use may be grounds for revocation of national security eligibility.” At the hearing in December 2022, Applicant strongly emphasized this he wants “to lick this thing,” referring to his alcoholism, and to live an alcohol-free life. This is his top priority now. He

feels that his alcoholism is ruining his life, his health, and possibly his career. (Tr. at 53, 55-65; AE A.)

Paragraph 2, Guideline I, Psychological Conditions

The Government cross-alleged under Guideline I the SOR allegations set forth in ¶¶ 1.b through 1.d, 1.f and 1.g. Applicant did not separately respond to these allegations in his Answer.

Mitigation

Applicant described his alcohol consumption, until he was about 45, as social. He blames the beginning of his excessive drinking on his “bad marriage.” He was opposed to divorcing for religious reasons. Instead, he turned to alcohol. Applicant acknowledged that he is an alcoholic. He now attends meetings of Alcoholics Anonymous (AA) most mornings, and he intends to continue to do so. He has a sponsor. Applicant believes that alcohol is a “tricky disease,” because it misleads you to believing that it is not a disease and is not a problem. It has taken him a long time to realize that he is an alcoholic and that he needs to do whatever the AA program requires. He is actively involved in the AA 12-step program. He is presently at Step 8. He intends to actively participate in AA for the rest of his life. He rents a room from an individual who is also in AA. They have an agreement that there will be no drinking of alcohol in the residence. Applicant explained that he has now fully accepted his disease of alcoholism and treats his disease with AA and by seriously practicing his religious faith. He also receives counseling from the pastor at his church. He understands now that he can no longer turn to alcohol to help him deal with stress in his life. After his last relapse he has a new sponsor. He speaks with the sponsor weekly. His prior sponsor lived too far from Applicant, and he recommended to Applicant that he should find a sponsor who lives near Applicant. (Tr. at 16-17, 19-24, 27, 60-61; AE I.)

Applicant’s AA sponsor wrote in a character reference letter that he has known Applicant for about six years through their attendance at AA meetings. He praised Applicant for “reworking” the 12 steps of AA. He commented that Applicant has held an administrative position in his church and now has a similar position with a social club. Applicant also submitted four other character reference letters. His former sponsor, a former neighbor, a former supervisor, and his church pastor all praised Applicant’s character and his dedication to maintaining sobriety. (AE C; AE I.)

Policies

When evaluating an applicant’s national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list

potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 - Guideline G, Alcohol Consumption

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 six conditions that could raise security concerns and may be disqualifying in this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

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

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations after a diagnosis of alcohol use disorder.

The record evidence establishes all of the above disqualifying conditions, which shifts the burden of mitigation to Applicant. The following mitigating conditions under AG ¶ 23 have possible application:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such 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.

None of the above mitigating conditions have been fully established. Applicant's alcohol abuse began in or about 2007, and he admittedly drank again as recently as July 2022. It is too early to conclude that it will not recur. Accordingly, his behavior casts doubt on his reliability, trustworthiness, and judgment. Applicant has acknowledged his disease of alcoholism and his lengthy pattern of alcohol abuse and relapses. He has also provided evidence of his actions to overcome this problem. He has committed to participating regularly if not daily in AA and has a local sponsor and his pastor to support him on a regular basis. He has not, however, demonstrated a clear and established pattern of abstinence in accordance with treatment recommendations and his own understanding that he cannot drink alcohol with relapses into alcohol abuse.

Applicant has participated in counseling and treatment programs on multiple occasions. However, he has an extensive history of relapses. Moreover, insufficient time has passed to establish that he is making sufficient progress in his AA program. Applicant has completed several treatment programs, but he has not yet been able to maintain sobriety for any significant period of time.

Applicant's counsel argued in his summation that Applicant's long history of successfully holding a security clearance and his honesty at the hearing about his struggle with alcoholism should be the measure by which his case is adjudicated rather than the potentially disqualifying conditions set forth in the Directive, quoted above. In essence, counsel argued that the disqualifying conditions in Guideline G do not provide the appropriate guidance for analyzing the potential security risks raised by Applicant's history of alcoholism. (Tr. at 73-78.) The Appeal Board, however, has rejected challenges to the Adjudicative Guidelines as inappropriate policy. The Board ruled that it, and therefore DOHA administrative judges, lack the jurisdiction to reject the application of the Directive's guidelines in a particular case. ADP Case No. 07-06039 at 4 (App. Bd. Jul. 8, 2008).

Counsel's argument also can be construed as a claim for relief or circumvention of the disqualifying and mitigating conditions of Guideline G. Applicant's attorney made a similar argument in an appeal in 2010. The Appeal Board rejected that appeal argument in ISCR Case No. 09-02839 at 2 (App. Bd. Oct. 29, 2010). The Board commented that giving an applicant special treatment not contemplated by Executive Order 10865 or the Directive "would have the practical effect of depriving other applicants of the fair, impartial and even-handed application of the law to which they are entitled." *Id.* It would indeed be unfair to not apply the disqualifying and mitigating conditions of Guideline G in this case in a fair, impartial and even-handed manner, just as those conditions are applied in every other case involving alcohol consumption under Guideline G.

The above precedents address and reject counsel's argument in favor of the renewing Applicant's national security eligibility. To the extent counsel overstated his argument and was merely seeking application of the whole-person concept as part of the overall considerations to be weighed, that issue is addressed below.

Applicant has not carried his burden of mitigating the disqualifying security concerns raised by the record evidence under Guideline G. Paragraph 1 is found against Applicant.

Paragraph 2 - Guideline I, Psychological Conditions

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 27, which states:

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.

AG ¶ 28 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (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;
- (c) voluntary or involuntary inpatient hospitalization; 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.

AG ¶ 28(a) does not apply because the behavior alleged is covered under another guideline, *i.e.*, Guideline G. The other two potentially disqualifying conditions have some application to the facts in this case, though the security concerns raised by Applicant's behavior are more properly analyzed under Guideline G, as discussed above. In light of the Government's election to proceed under Guideline I as well as Guideline G, I conclude that the record evidence supports the application of AG ¶ 28(c) and 28(d), which shifts the burden of mitigation to Applicant. The following mitigating conditions are set forth in 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 shows indications of emotional instability; and

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

None of the above mitigating conditions have application in this case. largely for reasons similar to those set forth under Guideline G, above. Applicant has not carried his burden of mitigation under Guideline I. Paragraph 2 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation 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 national security 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline G and Guideline I and the factors in AG ¶ 2(d) in this whole-person analysis. For many years, Applicant has been in and out of treatment for his abuse of alcohol. It is only since his most recent relapse in July 2022 that he has concluded that his use of alcohol was ruining his life, his health, and potentially his career. On May 26, 2022, the day he answered the SOR, he made a written commitment to abstain from using alcohol and expressed his understanding that "any inappropriate involvement with alcohol use may be grounds for revocation of national security eligibility." Two months later he did just that. I credit Applicant's years of holding a security clearance without a security incident or violation. I also credit Applicant's honest statement that he truly intends to live soberly for the rest of his life. But as he acknowledges, his disease of alcoholism is "tricky," and it has been very difficult for him to control it. He has not had a sufficient period of sobriety to evidence that he can successfully control his disease and live an alcohol-free life. In the absence of evidence of a lengthy period of sobriety, I cannot conclude that he no longer presents a security risk under the Adjudicative Guidelines. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G: Subparagraphs 1.a through 1.g:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline I: Subparagraph 2.a:	AGAINST APPLICANT 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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied

John Bayard Glendon
Administrative Judge