



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



In the matter of: )  
)  
) ADP Case No. 20-01779  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

03/13/2023

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**Decision**

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HALE, Charles C., Administrative Judge:

Applicant did not provide sufficient information to mitigate trustworthiness concerns raised under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Abuse), and J (Criminal Conduct). Eligibility for assignment to a public trust position is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 28, 2018, seeking eligibility for a public trust position. On September 20, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G, H, and J. The CAF acted under 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) promulgated in Security Executive Agent Directive 4 (SEAD 4), National Security Adjudicative Guidelines (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on December 6, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the written record without a hearing. Department Counsel submitted the Government's written case, including FORM Items 1 through 8, on August 26, 2022. On September 12, 2022, DOHA sent a complete copy of the file of relevant material (FORM) 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 September 24, 2022, and submitted a Response comprised of a statement and a letter (previously submitted with his Answer to the SOR) confirming he had successfully completed an outpatient treatment program for addiction. The letter will identified as Applicant Exhibit (AE) 1.

The case was assigned to me on January 23, 2023. The SOR and the answer, (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 8 and AE1 are admitted into evidence without objection.

### **Amendment to the SOR**

As originally drafted, the cross-allegation at SOR ¶ 3.c read as follows:

3.c. Information as set forth in subparagraphs 2.b through 3.a. above.

The copy of the SOR in the file (Item 1) contains a handwritten edit to SOR ¶ 3.a, whereby the reference to subparagraph "3.a" is crossed out, and a reference to subparagraph "2.d" is inserted instead. (Item 1) The Government's FORM does not mention this proposed amendment.

However, upon review, the reference in SOR ¶ 3.c to "subparagraph 3.a" is clearly erroneous, since it would be unnecessary to cross-allege an allegation already addressed under the same guideline. In addition, SOR ¶ 3.c is a cross-allegation, so Applicant has already admitted or denied the underlying conduct. He also incorporated his answer to SOR ¶ 3.b. (also a cross-allegation). (Item 2)

Accordingly, under DOD §§ E3.1.10 and E3.1.17, SOR ¶ 3.c is hereby amended so it reads as follows:

3.c: Information as set forth in subparagraphs 2.b through 2.d. above.

### **Findings of Fact**

Applicant admitted SOR §§ 1.a-1.e, 2.b-2.d, 3.a, and the cross-allegations at SOR §§ 3.b-3.c. He denied SOR ¶ 2.a. His admissions 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 29-year-old facilities and logistics support employee. He has been employed by his sponsor since July 2022. (Item 3 at 13.) He earned his high school

diploma in August 2010. He attended community college in 2012 and 2015 and has not completed his associates degree. (Item 3 at 12.) He is single and resides with his girlfriend and her two children. (Item 3 at 23 and Response.) He does not have any children of his own. (Item 3 at 24.)

Item 8 is Applicant's August 1, 2014 e-QIP. He marks on his June 28, 2018 e-QIP that he was granted a clearance. (Item 3 at 40.)

### **Guideline G (cross-alleged under Guideline J)**

In December 2013, Applicant was arrested and charged with Drunk in Public. In February 2014, he was found guilty in *absentia*. (Item 5 at 1.) (SOR ¶¶ 1.a, 3.b) He explained in his Answer he had gotten out of his friend's car while his friend "was being arrested for DUI" and the same officers arrested him as he walked to his friend's house.

In June 2014, Applicant was arrested and charged. He pled guilty in September 2014 of Driving While Intoxicated. (Item 5 at 4-5.) (SOR ¶¶ 1.b, 3.b) He was required to attend counseling as part of his sentence. (Item 5 at 5.) The Government notes he violated his probation. (Item 5 at 16.) Prior to his parole violation he was found to have failed to comply with court orders on multiple occasions. (Item 5 at 8-9,10-11, and 14-15.) He offered that he attended and completed the two required court ordered programs. (Item 2 at 1.)

In February 2017, Applicant was arrested and charged with Violation of Probation-Failure to Comply with ASAP (Alcohol Safety Action Program). He pled guilty in April 2017. (Item 5 at 16-17.) (SOR ¶¶ 1.c, 3.b) He asserted that he was confused about the scheduling and that he did not receive the notice for his first appointment because it was sent to a prior address. He offered that he completed the required counseling program. (Item 2 at 1.)

In July 2015, Applicant was arrested and charged with being Drunk in Public. He pled *nolo contendere* in January 2016 of being Drunk in Public or Profane. (Item 5 at 18-19.) (SOR ¶¶ 1.d, 3.b)

In February 2019, Applicant was arrested with being Drunk or profane in Public and Disorderly Conduct. He pled *nolo contendere* to the charges in May 2019. (SOR ¶¶ 1.e, 3.b) He states there was an unrelated altercation taking place that evening. When the police arrested him he told them he was reacting to the other person spitting on him. (Item 2 at 1.)

Applicant indicated on his 2018 e-QIP that he had sought treatment with an out-of-state care provider in 2015. (Item 3 at 39.) He listed completing his court required program in 2017. (Item 3 at 39.) He asserted that all these incidences were part of a chapter of his life when he was not mature enough to fully understand how poor his behavior was. He stated he is not a bad person and was just a young man doing what he

thought was "fun" and in dealing with the consequences of his actions he has "since matured and [does] not plan to venture down that road again." (Item 2 at 2.)

### **Guideline H (cross-alleged under Guideline J)**

Applicant denies using marijuana from about July 2015 to about December 2015, as alleged in SOR ¶ 2.a. On his June 2018 SCA he marked "no" to using drugs or controlled substances in the last seven years. (Item 3 at 37.) He told the investigator during his enhanced subject interview (ESI) on September 6, 2018, that he stopped using marijuana in December 2015. (Item 4 at 10.) He authenticated the ESI on August 24, 2020. (Item 4 at 3.)

Applicant admits that in May 2019, he tested positive for cocaine on a urinalysis test administered while he was on probation. (SOR ¶¶ 2.b, 3.c). He was on probation for being drunk and disorderly, the offense at SOR ¶ 1.e.

On two separate occasions, in July 2015 and May 2019, Applicant was arrested and charged with possession of marijuana. He later pled *nolo contendere* and was found guilty on both occasions. (SOR ¶¶ 2.c, 2.d, 3.c) In his Answer, he states he did not claim ownership of the marijuana.

As a general explanation for his conduct, Applicant asserted that, as with his alcohol-related offenses addressed above, these incidences were part of a chapter of his life when he was not mature enough to fully understand how poor his behavior was. (Item 2 at 2.)

### **Guideline J**

In December 2016 Applicant was charged and later found guilty in August 2017 of pointing a laser at a police officer. (SOR ¶ 3.a) He states it was not his intention to do any of this. He believed there was a possible break-in because when he saw flashlights shining up at the neighboring townhouse windows while he was sitting on his balcony. He states in his Answer that he shined his laser pointer to deter the suspected thieves. He was surprised to find out that it was law enforcement and apologized to them. (Item 2 at 2.) The reporting police officer reported that he saw them and "he thought it would be funny to mess with us." Item 6 at 20.)

Applicant offered a letter with his Answer and Response documenting his comprehensive outpatient addiction and treatment. (AE B). The treatment started in December 2020. He attended three times a week for three hours a day and he completed 29 sessions. He attended and participated in all aspects of the treatment, including random breathalyzer (BAI) testing for alcohol use and urinalysis testing for drugs. He tested negative for alcohol and all other substances tested. His program manager noted he had made significant progress in the areas of recognizing and managing craving, the ability to identify emotions, and gain insight to the motivations and reasons for his past

substance use and was very treatment-focused, engaged, well-respected and participatory in group sessions. Applicant completed the program in February 2021. (AE1)

Applicant in his Response stated he “was honestly embarrassed to see how many charges and mishaps” he had to admit to. He offered that his Answer was made “in a panic” and he was looking for “excuses or small discrepancies in the contents of the package to try and lighten things up a bit,” but as he went through the SOR he acknowledged “there was a whole lot of truth written out” for him “to finally own.” He acknowledged the reports describe him during a time in life where he was a “young adult having trouble finding [his] way.” He states these actions do not define [him] accurately as the man [he has] grown to be.” He offers that he has taken control his life is working on a plan to obtain a double major in cybersecurity and cloud computing. He asserts in his Response that he is using this experience to explain to the two children that depend on him “that your actions can and will catch up to you if you let them.”

### **Policies**

The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security. SEAD 4, ¶ E.4. A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of national security. The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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 national security to grant or continue eligibility for assignment to a public trust position.

## Analysis

### Guideline G: Alcohol Consumption

The security concern for alcohol consumption is detailed 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.

Applicant's admissions and the record establish the following disqualifying conditions under this guideline, as detailed in AG ¶ 22:

(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;

(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

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

Applicant has ongoing issues with alcohol consumption, as he incurred six alcohol-related arrests between 2013 and 2019 and violated his probation. AG ¶ 22(a) and AG ¶ 22(g) both apply. AG ¶ 22(c) also applies, as the record evidence of the six alcohol-related arrests supports a finding that Applicant engaged in recent, habitual consumption of alcohol to the point of impaired judgment.

The following mitigating conditions detailed in AG ¶ 23 are potentially 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;

(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; 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's first alcohol-related arrest in 2013 did not deter his behavior, as he incurred four more alcohol-related arrests over the next six years. AG ¶ 23(a) is not established.

The record shows Applicant eventually completed his required courses, including most recently in February 2021. While he declared his intent to refrain from alcohol abuse his alcohol issues are too recent and too serious to be considered mitigated. AG ¶ 23(b) is only partially established.

AG ¶¶ 23(c) and 23(d) are partially established. Even though Applicant recently completed a comprehensive substance abuse treatment program there is evidence of failing to comply with court-ordered programs. His alcohol related arrests are recent and ongoing. His overall pattern and history of alcohol-related issues are too recent for the above mitigating conditions to fully apply. Applicant did not provide sufficient evidence to establish that the security concern regarding his history of problematic alcohol involvement is mitigated.

#### **Guideline H, Drug Involvement and Substance Misuse**

The record establishes use of marijuana in 2015 (SOR ¶ 2.a). It also establishes that he used cocaine in 2019 (SOR ¶ 2.b) and was arrested and convicted twice possession of marijuana (SOR ¶¶ 2.c and 2.d).

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant's admissions and the record establish the following disqualifying conditions under this guideline, as detailed in AG ¶ 25:

- (a) any substance misuse (see above definition);

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

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

26: The following mitigating conditions are potentially applicable as detailed in AG ¶

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) is not established. Applicant's use of marijuana may have ended in 2015. However, he was arrested in 2019 for marijuana possession and subsequently tested positive for cocaine in 2019 while on probation. This makes his drug involvement more recent. His actions cast doubt on his reliability, trustworthiness, or good judgment.

AG ¶ 26(b) is partially established. Applicant declared determination to lead a life dedicated to the betterment of myself and the people around him. He provided evidence to support this declaration. However, his issues with illegal drugs are too recent and too serious to be considered mitigated. Applicant did not provide sufficient evidence to establish that the security concern regarding his drug involvement is mitigated.

### **Guideline J: Criminal Conduct**

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

¶ 31: The following disqualifying conditions are potentially applicable as detailed in AG



(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's five alcohol-related convictions and two drug possession convictions are cross-alleged under the criminal conduct guideline. He admitted the conduct involving pointing a laser at a police officer. He was cited for a probation violation. The above disqualifying conditions apply.

The following mitigating conditions are potentially applicable as detailed in AG ¶ 32:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) and (d) do not apply for the same reasons set forth under Guidelines G and H above. Applicant's criminal conduct is recent and ongoing. His recent rehabilitative steps, completing a treatment program, and dedicating himself to leading a life to the betterment of himself and the people around him are insufficient given the record evidence. He needs to establish a longer record of accomplishment of responsible behavior and compliance with rules, regulations, and the law before his criminal conduct can be considered mitigated.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. 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 G, H, and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines G, H, and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by his alcohol consumption, drug involvement, or criminal conduct. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

### **Formal Findings**

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

Paragraph 1: Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a-e:	Against Applicant
Paragraph 2: Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-d:	Against Applicant
Paragraph 3: Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a-c:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

Charles C. Hale  
Administrative Judge