



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



In the matter of:)	
)	
)	ISCR Case No. 22-00047
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Ronald Sykstus, Esq.

03/02/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline I, psychological conditions and Guideline G, alcohol consumption. Eligibility for access to classified information is granted.

Statement of the Case

On March 11, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions and Guideline G, alcohol consumption. The action was taken under Executive Order (EO) 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) effective on June 8, 2017.

In an undated answer, Applicant requested a hearing before an administrative judge. The case was assigned to me on October 25, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 7, 2022,

scheduling the hearing for January 12, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 13. Applicant and three witnesses testified. He offered Applicant exhibits (AE) A through D. There were no objections to any exhibits offered and they were admitted in evidence. DOHA received the hearing transcript on January 23, 2023.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. He denied the SOR allegations in ¶¶ 1.c, 2.a and 2.b. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 49 years old. He married in 2015 for the fourth time. He has one adult child from his first marriage and two minor children from his third marriage. He shares parental custody with his ex-wife. He has been employed by a federal contractor since April 2020. (Transcript (Tr.) 14-19, 60-62)

In February 1995, Applicant was arrested and charged with driving while ability impaired with a blood alcohol concentration (BAC) over .05% but less than .08% and driving under the influence of alcohol (DUI). He was found guilty of DUI. Applicant testified that he was with friends watching a football game over three to four hours and consumed some alcohol. He then drove and another car lost control and collided with Applicant head on. He admitted to the police that he had consumed alcohol and a breathalyzer was administered, which recorded his BAC. The actual BAC is unknown, but it was less than .08%. Applicant has not had any other alcohol-related incidents. (Tr. 20-21)

Applicant saw his same family doctor from 2010 to 2020 until he moved to a new state. In approximately 2014, Applicant began experiencing anxiety. He was in a stressful job that required him to dismiss other employees. He said it was not the job he had agreed to when he was hired. The stress of the job was affecting his health. He was treated by his family doctor and diagnosed with general anxiety. He was prescribed medication in 2014, which helped relieve his symptoms. When the stressors diminished, he felt better. Although he saw his family doctor on a regular basis, his appointments were not always related to stress, but were also for other medical reasons. Applicant credibly testified that he was not treated for anxiety from 2014 to 2019 as is alleged in SOR ¶ 1.a, but rather acute situations periodically created stress and anxiety which were then treated. These were not chronic conditions but more related to situational factors. When the stressors decreased, his anxiety diminished. (Tr. 31-33)

In May 2017, Applicant recognized he was consuming too much alcohol and voluntarily sought treatment. He attributed his consumption to a period when he and his ex-wife were dealing with custody of their children. He shared custody of his children with his ex-wife and had the children every other week. For a period, his older child lived with him. His ex-wife's husband was transferred to a new location and visitation became more difficult for him. Applicant was close to his children and missed them. He credibly testified

that the family court ruled that both parents were fit to have legal custody of the children. However, due to his ex-wife's geographical move, he asked his children where they wanted to live, and they chose to stay with their mother. Applicant continues to visit them regularly, and they have a good relationship. (Tr. 22-25, 38; GE 4, 5)

Applicant voluntarily admitted himself into a five-day detoxification program in May 2017. He was diagnosed with Alcohol Dependence. He testified that he started consuming alcohol and he gradually increased the amount he was consuming up to a full bottle of alcohol a day before he sought treatment. He admitted he was a heavy drinker for about a year before admitting himself to the detoxification program. He testified that he was physically dependent on alcohol when he entered the program. He said that at the recommendation of the treatment center, he participated in outpatient treatment for six months until the program was completed. He participated in Alcoholic Anonymous (AA) as part of the after-care program. He went to two to three meetings a week at the time. He has not participated in AA since then. He said it was not the right program for him. He stated that as the physical dependence decreased, his depression improved, and alcohol was no longer an issue. (Tr. 25-26, 38-44, 54-55; GE 4, 5)

Applicant testified that he abstained from alcohol consumption for about six months after the detoxification program. He then occasionally had a drink if he was on vacation or having a special dinner, but he was not consuming it daily. He no longer craved it. He established a moderate drinking pattern. (Tr. 26)

Applicant was on medical leave from his job for anxiety prior to May 2016. When his medical leave was terminated, he was unemployed until May 2017. He said he did not drink while he was working. He was terminated from his job because he was taking medical leave related to anxiety and the stressors associated with the expectations of the job, which he could not perform. He admitted that when he was denied further medical leave, it likely had an impact on his drinking. (Tr. 44-45)

In 2019, Applicant requested medical leave from his employer related to the stress and anxiety that he was experiencing due to custody issues with his children. He was also moving to a new state for a position that was a significant distance from where his children were living. He attempted to work remotely to be closer to his children, but his request was denied. Applicant testified that in the past he has used alcohol to manage depression, anxiety, stress, and physical pain. He has learned from his past mistakes when he tried to resolve his problems by himself. He now knows when he needs to reach out for help. He recognizes the triggers that impact his decisions and he attended therapy during his child custody case. He is presently not participating in treatment. (Tr. 30-31, 56-57)

In late 2021, Applicant was experiencing a serious physical medical condition and he was using alcohol to relieve the pain for about two to three months in the evenings to help him sleep. He admitted he was self-medicating. He said his doctor was aware that he was consuming alcohol. His doctor did not believe he was becoming physically

dependent on alcohol but concurred the amount of alcohol he was consuming at the time was excessive. (Tr. 47-50, 62-65; GE 3)

In December 2021, Applicant had surgery for his medical condition. He did not consume alcohol for four months after the surgery. Upon a follow-up medical appointment, he was told by his doctor that he could consume alcohol periodically, but not on a regular basis because it would have a negative effect on his medical condition. He subsequently consumed alcohol while on vacation. He testified that he had also consumed one drink on a few other occasions, and it was a low alcohol-content beer. He later had additional medical tests, and the doctor told him that given his autoimmune disorder, it would be better for his health to completely abstain from alcohol consumption. Subsequently, he has not had alcohol since May 2022. His wife no longer consumes alcohol. They do not have alcohol in the house. (Tr. 27-31, 50-52, 58-60; GE 3)

Applicant testified that he has found outlets to help him reduce stress. He now lives in an area that is not as demanding. He and his wife have found a core group of friends that are a support group, which he previously did not have. They are also an important social circle for him and his wife. He can talk to intimately to this group, which helps him from internalizing issues. He has taken up woodworking and other hobbies which provide significant help in reducing his stress. (Tr. 68-70)

Applicant testified that he does not believe he is an alcoholic, but admits he abused alcohol in the past, and his excessive use was triggered by stressful events in his life, for which he sought help. (Tr. 38-39)

In November 2021, Applicant was evaluated by a licensed psychologist, Dr. B. She indicated that based on her interview, available medical records, a security investigation file, and psychological screening that Applicant met the criteria for alcohol use disorder, mild; major depressive disorder; panic disorder; anxiety; and narcissistic personality. The latter she noted likely contributed to work-related difficulties. She noted he had a history of severe alcohol use disorder, continued to consume alcohol, and he was not currently participating in treatment. She noted that Applicant's statements suggested he was unwilling to acknowledge the psychological components of his use disorder, despite statements that it was a "coping mechanism." She opined that Applicant was unlikely to be able to safeguard sensitive information and his judgment was poor. She opined that Applicant appeared deceptive and dishonest and his prognosis was poor. (GE 2)

Applicant credibly testified that Dr. B.'s medical evaluation consisted of a 60-to-90-minute ZOOM conference call during which the video connection was disrupted, jumpy and choppy, and would break up several times. The audio on the ZOOM call did not work, so Dr. B had Applicant call her on the telephone. Dr. B made no mention of the intermittent difficulties with the video or audio connection during the evaluation and its potential negative impact on her personal observations of Applicant. (Tr. 34-35, 70-71) Of interest was Dr. B's comment:

He was observed to take long pauses and reduce eye contact once he was repeatedly asked to respond to the question at hand. He also chuckled at nearly all questions presented, despite the fact that the questions were direct and non-humorous. His presentation was consistent with that of patients attempting to present as self-assured, though actually quite insecure and manipulative to those around him. (GE 2)

Applicant testified that due to the connectivity difficulty with the ZOOM evaluation and being generally nervous about having a psychological evaluation that he likely was not his normal self. (Tr. 35-37)

Dr. B had Applicant take the Personality Assessment Inventory (PAI). She stated the following:

Validity scales indicated that [Applicant] was consistent and honest in his response style. This indicated that the consequent profile is a reasonable depiction of the applicant's self-appraisal. There were no indications of psychological impairment on the PAI clinical profile. His responses indicate that [Applicant's] interests/motivation for treatment is comparable to that of adults who are not being seen in a therapeutic setting. Moreover, his level of treatment motivation is somewhat lower than is typical of individuals being seen in treatment settings. His responses suggest that he is satisfied with himself as he is, that he is not experiencing marked distress, and that, as a result, he sees little need for changes in his behavior.

Based on his responses, his interpersonal style seems best characterized as self-assured, confident, and dominant. Although not unfriendly, he is likely to be described by others as ambitious and having a "leader-like" demeanor. He is comfortable in social settings, but is not likely to mix indiscriminately, preferring to interact with others in situations over which he can exercise some measure of control. (GE 2)

Dr. B noted in her report that Applicant was not able to obtain custody of his children. Her statement is inaccurate. Applicant has always had joint legal custody of his children and continues to do so. He is involved in their lives and participates with their mother in decision-making for the children. (Tr. 35-36; GE 2).

Dr. B's comments under her diagnostic impressions, note that Applicant met the criteria for alcohol use disorder, mild, and commented "at the very least." She noted that it was based on Applicant's self-assessment, but she found he lacked candor. He was not in treatment and did not acknowledge he was an alcoholic. She believed he was unwilling to acknowledge the components of his alcohol use disorder and his insight was limited. She found he was "unlikely to be a reliable employee, as his work history shows." She determined his judgment was poor and he "appears deceptive and dishonest, putting his trustworthiness in question" and his prognosis is "very poor." (GE 2)

Applicant's wife testified on his behalf. She has known Applicant since 2014. She confirmed that Applicant does not have a current issue with alcohol. They have attempted to reduce their stress and since moving to a new state they have been successful. She confirmed he has found activities to help him. In 2017, she was concerned about his alcohol consumption, but was satisfied when he voluntarily went through detoxification. She recognized that he had issues with anxiety, depression, and alcohol in the past, but stated that he has addressed them. She has read the psychological report by Dr. B and emphatically disagrees with her assessment, especially the narcissism diagnosis. She said the Applicant goes out of his way to be nice and puts her before himself. He strives to do the right thing. They have a happy home and take care of each other. She and her husband no longer consume alcohol and there is none in their home. (Tr. 74-85)

Applicant's father testified. He acknowledged that Applicant addressed his issues with alcohol, and it has not been a problem in the past couple of years. He believes Applicant's mental health is good. He was aware that Applicant went through a difficult time when he was dealing with custody issues. (Tr. 87-90)

A friend of Applicant's testified on his behalf. They worked together at one time and are good friends. He is aware that Applicant is applying for a security clearance. He has no concerns about granting him access. (Tr. 91-95)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concerns for alcohol consumption:

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 describes conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(a) alcohol-related incidents away from work, such as driving 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;

(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.

In 1995, Applicant was convicted of DUI with a BAC of greater than .05% and less than .08%. In 2017, he admitted himself for alcohol treatment and completed a five-day detoxification program. In 2021, a psychologist diagnosed him with alcohol use disorder, mild. There is substantial evidence that he was consuming large quantities of alcohol before he entered detoxification and then later to relieve pain. AG ¶¶ 22(a), 22(c) and 22(d) apply. There is insufficient evidence to conclude that Applicant failed to follow treatment advice or recommendations after being diagnosed. AG¶¶ 20(e) and 20(f) do not apply.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions 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

(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 DUI was in 1995. It is the only alcohol-related incident alleged. In 2017, he voluntarily admitted himself for detoxification and successfully completed the program and aftercare. Applicant has acknowledged that due to stressors in his life he was consuming large quantities of alcohol before he sought treatment in 2017. He admitted he consumed alcohol before he had surgery in late 2021 due to physical pain and to help him sleep. He subsequently consumed minimal alcohol after his surgery and has abstained since May 2022. He credibly testified that he has found alternative ways to deal with stress, including the support of his wife and a group of friends. Due to medical concerns, his doctor recommends he not consume alcohol and he has been compliant, as reported by his wife. There is sufficient evidence that he has demonstrated a clear and established pattern of modified consumption. It has been 28 years since Applicant's only alcohol-related incident.

The evidence establishes that Applicant went through some tumultuous periods in his life when he had a stressful job and when he encountered child custody issues, and later when his children were geographically relocated. He is now in a better emotional place and has the support to ensure future issues do not occur. Although at times he was drinking to excess, he recognized that his consumption was an issue and has taken steps to significantly to modify it. I found his commitment to sobriety at this time credible, and the facts demonstrate that his issues are under control and unlikely to recur. I find that his behavior does not cast doubt on his current reliability, trustworthiness, or judgment. AG ¶¶ 23(a), 23(b), and 23(d) apply.

Guideline I: Psychological Conditions

The security concern for psychological conditions 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 interference 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. I have considered all the disqualifying conditions under AG ¶ 28, and the following are potentially applicable:

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

The SOR alleged that Applicant sought treatment from a medical group and was diagnosed with anxiety in 2014 and a panic disorder in 2019. Other than those diagnoses there is insufficient evidence to support a conclusion that Applicant exhibited behavior as

described in AG ¶ 28(a) which casts doubt on his judgment, reliability, or trustworthiness. AG ¶ 28(a) does not apply.

There is an opinion by a psychologist that Applicant met the criteria for alcohol use disorder, mild, major depressive disorder, panic disorder, anxiety, and narcissist personality traits. She opined that it would be unlikely that he would be able to safeguard sensitive information and that his judgment was poor. She opined that he appeared deceptive and dishonest, putting his trustworthiness in question and his prognosis was poor. AG ¶ 28(b) applies. There is no evidence that Applicant failed to follow prescribed treatment or counseling. AG ¶ 20(d) does not apply.

The guideline includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating condition under AG ¶ 29 was considered:

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

Applicant was evaluated by Dr. B in November 2021. I have concerns about the quality and findings of the evaluation based on the 60-to-90-minute Zoom call that was repeatedly interrupted due to technical difficulties and the lack of synchronized audio, whereby Applicant had to use his telephone to complete the evaluation. Dr. B made no mention of these difficulties but commented on Applicant's lack of eye contact and other external factors that were beyond his control. Regardless, I have considered her evaluation. I have also considered Applicant's testimony and his wife's and found them credible, particularly regarding his current abstinence and change in environment. There is sufficient evidence that Applicant had alcohol issues in the past that have been addressed under the Guideline G analysis. He also had anxiety and a panic disorder, which was treated with his primary care doctor's help. These were related to his job and issues with being separated from his children. Applicant has a new job, moved to a new state, and his stress level has been reduced. Applicant presented sufficient evidence that these issues are under control, and he has found methods to alleviate his stress. The last time Applicant experienced significant anxiety was in 2019, almost three years ago. He has a strong support group, including his wife. He has found relief through his woodworking and other hobbies. He maintains a good relationship with his children. There is sufficient evidence that Applicant no longer has a current problem. I find AG ¶ 28(e) applies.

Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and I in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant had issues with alcohol and addressed them. He has not had any alcohol-related incidents since 1995. He admitted himself into a detoxification program because he recognized he was consuming too much alcohol. He did not abstain from alcohol consumption but modified his drinking. He had a physical medical condition in 2021, for which he used alcohol to help him with the pain and to sleep at night before he had surgery. Once that condition was resolved, he again modified his consumption. In 2022, his physician recommended that he completely abstain from consuming alcohol based on his health issue. He is doing that. I considered all the evidence and believe Applicant has a clear appreciation for the problems his past alcohol consumption has had in his life and health, and the potential negative effect it could have on his employment. He recognizes his stressors and has found outlets to alleviate those issues. I considered the psychologist's evaluation, but found inconsistencies between objective information, such as the PAI, and subjective opinions. He does not have a perfect background, but that is not the standard in analyzing eligibility for a security clearance. Based on all the evidence, I do not believe Applicant is a security risk. Applicant has met his burden of persuasion. The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under Guideline G, alcohol consumption and Guideline I, psychological conditions.

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

Subparagraphs 2.a-2.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted

Carol G. Ricciardello
Administrative Judge