



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



In the matter of:)	
)	
)	ISCR Case No. 22-00768
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany C. White, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2023

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the psychological conditions, drug involvement and substance misuse, and alcohol consumption security concerns. He mitigated the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 6, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline I, psychological conditions, Guideline H, drug involvement and substance misuse, Guideline G, alcohol consumption, and Guideline E, personal conduct. On October 21, 2022, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on February 2, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 14, 2023. He

did not respond by the deadline. The case was assigned to me on May 9, 2023. The Government exhibits included in the FORM (Items 1-8) are admitted in evidence without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor for whom he has worked since October 2019. He received a high school diploma in 2003. He has not been married and has no children. He served on active reserve duty with the U.S. Air Force from 2005 to 2013 and received an honorable discharge. (Items 3, 8)

Applicant has a history of mental health issues and inpatient hospitalizations. He has been diagnosed with schizophrenia and unspecified psychotic disorder by a duly qualified mental health professional. His mental-health disorders cause periods of psychosis where he suffers from delusions, hallucinations, paranoia, and memory loss. He began experiencing these symptoms in about 2010. (Items 2, 3, 5, 7, 8)

In late November 2019, Applicant checked himself into an inpatient hospital for mental health treatment because he was suffering from an increase in audio-visual hallucinations, high anxiety, and insomnia. During this inpatient treatment, he reported that, for years, he had been misusing prescription Xanax and prescription Ambien by taking more than the amount he was prescribed. He also reported that he had been binge drinking about a pint of liquor one to two times per week to help him sleep. According to his medical records from this hospital, combining alcohol with several of the prescription drugs he was taking is a misuse of those prescription drugs. This inpatient treatment lasted for about a week. During this treatment, a certified psychiatric nurse practitioner diagnosed him with an unspecified schizophrenic spectrum and other psychotic disorder, and an unspecified stimulant use disorder (moderate). (Items 2, 3, 5, 7, 8)

In January 2020, Applicant reported that he voluntarily checked himself in to another inpatient hospital because he was again suffering from psychosis. There is no evidence in the record as to how long this second inpatient hospitalization lasted, the specific treatment he received, or whether he was diagnosed with a mental health disorder. (Items 2, 3, 7)

Applicant was evaluated at the DOD's request by a licensed psychiatrist, and the report of the evaluation was issued on March 8, 2022. After meeting with him virtually, reviewing the results of an online psychological inventory, and reviewing Items 3, 5, 6, and 8, the DOD's licensed psychiatrist found his condition to be "suspicious for schizophrenia," but diagnosed him with an unspecified psychotic disorder and polysubstance abuse of alcohol and prescription medication. She opined that his conditions are likely to impair his reliability, judgment, stability, and trustworthiness, and that his prognosis was guarded. Her prognosis was partly based upon the premise that he was not receiving psychiatric treatment, but he had made an appointment to start doing so. According to a letter from his treatment provider dated October 20, 2022, he received psychiatric treatment from a licensed psychiatric nurse practitioner since

March 28, 2022, and he remained stable on his current medication and treatment regimen. This licensed psychiatric nurse practitioner diagnosed him with schizophrenia and attention deficit hyperactivity disorder (ADHD). (Items 2, 3, 5, 7, 8)

Applicant acknowledged that he has made poor decisions and has shown poor judgment when he is suffering from psychosis. For example, in March 2020, when he was suffering from psychosis, he drove while he was intoxicated. He claimed that he would not have driven while intoxicated if he had not been suffering from psychosis. He also claimed that he has only abused his prescription medications and alcohol when he was in a period of psychosis and claimed that he would not have abused those substances otherwise. (Items 2-8)

Applicant claimed that he is feeling better mentally. He claimed that his treatment with a licensed psychiatric nurse practitioner has helped, and that he plans to continue that treatment, including following her advice regarding prescription medication. He claimed he has had no episodes of psychosis after his January 2020 inpatient hospitalization. He claimed that he has learned better coping mechanisms. At the time of his meeting with the DOD psychiatrist, he had recently moved in with his father and lived closer to his siblings and one of his good friends. He noted that he has sought inpatient treatment whenever he has a period of psychosis. He did not indicate whether he still suffers from audio or visual hallucinations or paranoia. He has not received substance abuse counseling other than detoxification. The DOD licensed psychiatrist opined that he should be receiving treatment for substance abuse. She also noted that he had a lower-than-average motivation for treatment level compared to others with mental health issues and that he sees little need for changes in his behavior. She opined that these qualities are poor prognostic indicators. (Items 2, 3, 7, 8)

In February 2008, Applicant drove while intoxicated. He was stopped by police and arrested for aggravated driving under the influence of alcohol (DUI). He was convicted of this crime. He spent four days in jail and had to pay fines. (Items 2-4, 7)

In March 2020, Applicant was consuming alcohol while in a state of psychosis. His dog got out of his house and went missing. Applicant drove his car while intoxicated to attempt to find his dog. While he was driving while intoxicated, he struck a power line pole with his vehicle. Police arrested him and charged him with extreme DUI (.15 per cent blood alcohol content (BAC) or higher). He spent the night in jail. In July 2021, he pleaded guilty to a lesser charge of reckless driving. The court suspended his driver's license for 90 days and ordered him to pay about \$1,300 in fines. The court also ordered him to undergo an online drug and alcohol screening. As of his June 2020 security interview, he had not taken this online screening and has not provided any evidence that he has since completed it. (Items 2-4, 6-8)

Applicant provided inconsistent information about his alcohol consumption. During his 2019 inpatient hospitalization, Applicant reported his aforementioned consumption of a pint of liquor one to two times per week. During his June 2020 security interview, he told the investigator that he drinks four beers about four to five hours before he takes his prescription medications. He told the DOD licensed psychiatrist in

March 2022 that he had not consumed alcohol since his 2020 DUI arrest. He also told her that he had not consumed alcohol in about eight months. He later told her that it had been a year since he last had alcohol. In his response to the SOR, he claimed that he now rarely drinks alcohol and only has a couple of drinks when he does. He provided no evidence that he is permitted to consume alcohol while on his current prescription medication regimen. (Items 2, 5, 7, 8)

Beginning in about June 2013, for a little over two years, Applicant misused his employer-issued company credit card by using it to pay about \$86,000 for personal expenses. In April 2016, his employer fired him for this credit card misuse. He claimed that he thought there was an unwritten rule that he could use the company credit card for personal expenses if he timely paid off his balance. However, he did not timely pay off the balance. He claimed that he has since satisfied the account after paying about \$20,000 on it over two years. He provided no documentary evidence of this resolution. He claimed that he now understands this misuse was wrong and he has not misused a company credit card since 2015. (Items 2, 3, 7, 8)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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 inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

AG ¶ 28 provides conditions that could raise security concerns. The following are potentially applicable in this case:

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

(c) voluntary or involuntary inpatient hospitalization.

AG ¶ 28(b) requires 1) an opinion by a duly qualified mental health professional that the individual has a condition; and 2) that the condition may impair judgment, stability, reliability, or trustworthiness.

Qualified mental health professionals have diagnosed Applicant with schizophrenia and an unspecified psychotic disorder. These mental health conditions cause Applicant to have periods of psychosis where he shows poor judgment, stability, and reliability. For example, he misuses prescription medications, binge drinks alcohol, and drives while under the influence of alcohol during his periods of psychosis. He also has trouble remembering his actions after the period of psychosis has ended. The DOD licensed psychiatrist found that his unspecified psychotic disorder may impair his judgment, stability, reliability, or trustworthiness. He has twice undergone voluntary inpatient hospitalizations for his mental health issues. The above listed disqualifying conditions are applicable.

AG ¶ 29 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (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.

Applicant has suffered from psychosis, including audio-visual hallucinations since about 2010. As his symptoms lasted for at least 10 years, and he had another inpatient hospitalization after his first, I cannot find that his conditions are readily controllable with treatment. Moreover, none of the qualified mental health professionals have opined that his conditions are controllable with treatment. His mental health professional merely stated that he was stable at the time of her letter. While I commend him for seeking treatment for his mental health conditions, I also cannot find that the six months of mental-health treatment he received as of October 2022 constitutes ongoing and consistent compliance with his treatment plan. AG ¶ 29(a) does not apply.

AG ¶ 29(b) does not apply because there is insufficient evidence to show that his conditions are controllable with treatment, and he has not received a favorable

prognosis. At best, the evidence shows that he is stable on his current treatment regimen.

There is no evidence that a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government has opined that Applicant's previous condition is under control or in remission. There is evidence from a licensed psychiatric nurse practitioner, but not one employed by or acceptable to the Government, that his conditions are under control. Also, there is no evidence that he has a low probability of recurrence or exacerbation. AG ¶ 29(c) does not apply.

There is insufficient evidence that Applicant's psychiatric conditions are temporary, and the situation has been resolved. Instead, at best, there is evidence that he has stabilized. AG ¶ 29(d) does not apply.

While there is evidence that Applicant's conditions have stabilized, I cannot find that there is no indication of a current problem. Applicant's mental health conditions remain, and he has suffered from bouts of psychosis after treatment in the past. The lack of evidence that his conditions are treatable also detracts from a finding that there is no indication of a current problem. AG ¶ 29(e) does not apply.

I commend Applicant for seeking help with his mental health issues. However, none of the Guideline I mitigating conditions are fully applicable. He has not mitigated those security concerns.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

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

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

For years, Applicant misused prescription medications by overusing them and using them in combination with alcohol. The DOD licensed psychiatrist diagnosed him with polysubstance abuse of prescription drugs. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; and

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

While it has been about four years since Applicant last misused his prescription drugs, he did so for several years, so his misuse was not infrequent. There is evidence that his mental health conditions are stable, however, there is no evidence that they are resolved. As he last misused prescription drugs to help him cope with his still present mental health conditions, I cannot find that his misuse happened under such circumstances that it is unlikely to recur. AG ¶ 26(a) does not apply.

Applicant has acknowledged his prescription drug misuse, and he has undergone mental health treatment that has since seen his mental health conditions stabilize. However, he has not undergone substance abuse treatment. By moving to a more stable environment with his father, he has changed the environment where he misused the prescription drugs. He did not provide a signed statement of intent to abstain from all drug involvement and substance misuse. AG ¶ 26(b) partially applies.

Applicant abused his prescription medication during a prolonged period of mental illness. He was legally prescribed the drugs he misused. The record contains consistent evidence that he has stopped abusing prescription drugs. AG ¶ 26(c) applies.

While one of the mitigating conditions is fully applicable and another is partially applicable, the applicability of one or more mitigating conditions does not establish overall mitigation. Instead, because all doubts must be resolved in favor of national security, and because of the questions I have about the potential recurrence of prescription drug misuse, I cannot find that the Guideline H security concerns are mitigated.

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable 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;

(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; and

(e) the failure to follow treatment advice once diagnosed.

Applicant drove while under the influence of alcohol. On two occasions, he was arrested while doing so. At one point in time, he was consuming excessive amounts of alcohol to help him sleep. This consumption caused him to have impaired judgment as evidenced by his March 2020 DUI. He was diagnosed with polysubstance abuse of alcohol and prescription medicine but has not received treatment for it. All the above disqualifying conditions are established.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following 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 previous history of 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.

While it has been about four years since Applicant has had an alcohol-related legal incident, his varying and inconsistent accounts of his alcohol consumption cause me to question that his problems with alcohol are unlikely to recur. His failure to seek substance abuse treatment bolsters my concerns. AG ¶ 23(a) does not apply.

Applicant acknowledged that he has a problem with alcohol. He claimed that he has been able to drink less alcohol. However, as his reports of his alcohol consumption are inconsistent and varied, he has not provided sufficient evidence of a clear and established level of alcohol consumption in accordance with a treatment plan. AG ¶ 23(b) does not apply.

Applicant is not participating in an alcohol-related treatment program, and he has not completed one. AG ¶ 23(c) and AG ¶ 23(d) do not apply. None of the Guideline G mitigating conditions apply and the alcohol consumption security concerns are not mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

Applicant's Guideline H and G conduct that the Government cross-alleged under Guideline E are explicitly covered under those guidelines and are sufficient for an adverse finding under those guidelines. AG ¶ 16(c) and AG ¶ 16(d) are not established with respect to SOR ¶¶ 4.a and 4.b, and I find in Applicant's favor with respect to those allegations.

Applicant's repeated misuse of his employer's credit card for personal expenses over several years involves questionable judgment, dishonesty, and unwillingness to comply with rules and regulations. This conduct makes Guideline E applicable.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating condition potentially applies in Applicant's case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

It has been about eight years since Applicant last misused his employer's credit card. He claimed that he now understands that he cannot use an employer's credit card to pay for personal expenses and he will not do it again. I find that so much time has passed since he engaged in this behavior that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, and good judgment. The Guideline E security concerns are mitigated.

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 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 I, H, G, and E in my whole-person analysis. I have also considered his military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not mitigate the psychological conditions, drug involvement and substance misuse, and alcohol consumption security concerns. He mitigated the personal conduct security concerns.

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 I:

AGAINST APPLICANT

Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraphs 3.a-3.d:	Against Applicant
Paragraph 4, Guideline E:	FOR APPLICANT
Subparagraphs 4.a-4.c:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge