



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



In the matter of:)
)
) ISCR Case No. 22-01808
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

06/15/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline I (Psychological Conditions) and Guideline G (Alcohol Consumption). Applicant has not mitigated the Government's security concerns under Guideline I and Guideline G. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on January 23, 2020. The Department of Defense (DoD) sent him a Statement of Reasons (SOR) dated November 23, 2022, alleging security concerns under Guideline I and Guideline G. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on

January 30, 2023. On January 31, 2023, a complete copy of the file of relevant material (FORM) was sent 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 February 8, 2023, and did not provide a response.

The SOR and the answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 7 were offered as evidence and are admitted into evidence without objection.

Findings of Fact

Consistent with his January 23, 2020 SCA, Applicant admitted all allegations. His admissions in his Answer 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 46 years old. He is married to his third spouse and has two children and three adult stepchildren. He has worked for his sponsor since 2007 as an inspector. He earned an associate's degree in 2007. He has never held a security clearance. (Item 3 at 7, 12, 16-18, 20-23, and 36.)

Guideline I – Psychological Conditions

SOR ¶ 1.a: On July 29, 2022, at the request of the DoD, Applicant underwent a psychological evaluation. The DoD psychologist concurred with the diagnosis of his treating physicians that he had major depressive disorder, recurrent, mild, and an alcohol use disorder. (Item 4 at 6.)

SOR ¶ 1.e: Applicant's history of suicidality goes back to 1993, when he intentionally overdosed on Tylenol with codeine. (Item 4 at 7.) **SOR ¶ 1.c:** His most recent suicide attempt occurred in the summer of 2018, after a domestic disturbance, when he intentionally overdosed on a prescription muscle relaxer, Baclofen. (Item 3 at 35 and Item 5 at 26.) As a result of the overdose, he was placed in a medically induced coma. **SOR ¶ 1.b:** After the 2018 suicide attempt, he underwent psychiatric treatment and was diagnosed with major depression, recurrent, severe, without psychosis, and alcohol use disorder, severe. (Item 5 at 4-5.) **SOR ¶ 1.f:** During treatment after his 2018 suicide attempt, he reported five suicide attempts since the age of 16. (Item 5 at 5.) He acknowledged to the DoD psychologist to planning and attempting suicide three times since age 16. (Item 4 at 4.) **SOR ¶ 1.d:** In a domestic disturbance in 2005 he placed a revolver to his head before ultimately discharging the weapon into the ceiling. (Item 4 at 4.)

Applicant first sought treatment for depression in the early 2000s, after his first divorce. He was prescribed a series of medications, which in short term use proved ineffective at reducing his symptoms. (Item 4 at 2.) He discontinued treatment within a

few months and did not resume treatment until 2012. He stopped the 2012 treatment after two weeks. (Item 4 at 2.)

After his 2018 suicide attempt, he was prescribed Zoloft. The medication has been effective in moderating his depression, and he continues taking it. Zoloft is his primary means for treating his mental health issues. (Item 4 at 2 and Item 5 at 5.) However, the DoD psychologist noted continued alcohol consumption negates the effectiveness of the medications for his depression. (Item 4 at 6.) Applicant reports his use of medication at approximately “one time a week” and described its use to address stress management, procrastination, and to change his attitude. (Item 4 at 2-3.)

Guideline G – Alcohol Consumption

SOR ¶¶ 2.a and 2.c: Applicant, even after the events alleged in SOR ¶¶ 1.c and 1.d, admits in his Answer, and contrary to medical advice, his continued alcohol use. (Item 4 at 4.) He notes in his Answer his doctor is aware of his continued alcohol use. In his 2020 security clearance interview he told the investigator as of July 2018 he no longer used alcohol. (Item 7 at 8.) During his July 2022 psychological evaluation, he told the DoD psychologist he consumed “alcohol approximately four times weekly, drinking between two and five alcoholic beverages each setting, and only drinking more than six alcoholic drinks approximately monthly.” (Item 4 at 7.)

SOR ¶¶ 2.d-2.f allege alcohol-related arrests. Applicant admits to each incident: the 2015 incident resulted in him being charged with fourth-degree assault; the 2009 incident resulted in an arrest for fourth-degree assault and second-degree disorderly conduct; and the 2004 DUI arrest. (Item 3 at 29-32, Item 6, and Item 7 at 4-5.)

SOR ¶ 2.b states Applicant has experienced adverse personal, professional, and financial consequences because of alcohol consumption since at least 2003. In addition to the three alcohol-related arrests discussed in SOR ¶¶ 2.d-2.f, the record shows several other professional and personal consequences. He attributes alcohol consumption to missing work due to being hungover; his two suicide attempts in 2005 and 2018; his second divorce; and his financial problems, including a 2014 foreclosure. (Item 4 at 3; Item 2 at 2 and Item 5 at 4, 5; Item 3 at 18; and Item 3 at 36-37 Item 4 at 3.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Guideline I, Psychological Conditions

The concern under this guideline 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 28. Given Applicant's diagnoses and suicidal actions the following disqualifying conditions are applicable 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; and

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

The following mitigating conditions under AG ¶ 29 are 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; and

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

AG ¶ 29(a) is not established. Applicant acknowledges five suicide attempts starting in 1993. He details three of those attempts, most recently 2018. While alcohol

abuse was involved and addressed in SOR ¶¶ 2.a and 2.b, his self-harming behavior casts doubt on his judgment, stability, reliability. Sufficient time has not passed to demonstrate Applicant's complaints have been worked out given his history of mental illness and suicidality.

AG ¶ 29(b) is not established. Applicant is voluntarily participating in a treatment program, receiving counseling and medication. He has not established a sufficient history of being fully compliant with his treatment plan. His continued alcohol consumption negates the effectiveness of the medications for his depression.

AG ¶ 29(c) is not established. He provided no contrary evidence from a medical professional regarding his mental and behavioral health.

AG ¶ 29(e) is not established. Sufficient time has not passed to demonstrate Applicant's problems have been worked out given his history of mental illness and suicidality.

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set forth 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 disqualifying conditions are 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; and

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

SOR ¶ 2.a cross-alleges the Guideline I concerns, SOR ¶¶ 1.a through 1.d, under Guideline G. Applicant's DoD psychological evaluation is the basis for SOR ¶ 1.a. In this evaluation, he acknowledges alcohol abuse in the early 2000s, again in 2012, and in 2018, as well as associated alcohol-related incidents away from work. In his DoD psychological evaluation and in his 2018 treatment he discusses his continued alcohol

use and the alcohol-related incidents and the consequences. AG ¶ 22(a) and AG ¶ 22(c) apply. He was diagnosed with an alcohol use disorder in both 2018 and 2022. AG ¶ 22(d) applies.

The following mitigating conditions under AG ¶ 23 are 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; and

(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.

AG ¶ 23(a) is partially established as noted below. Applicant's history shows numerous alcohol-related incidents between 2003 and 2018. Insufficient time has passed to demonstrate that the behavior is unlikely to recur. The specific conduct concerns detailed in SOR ¶¶ 2.d through 2.f are mitigated as a duplication of SOR ¶ 2.b. The portion of SOR ¶ 2.a that cross-references SOR ¶¶ 1.c and 1.d is mitigated for Applicant as duplicative of information also included in SOR ¶ 2.b.

AG ¶ 23(b) is not established. Applicant admits the incidents and acknowledges but he continues to consume alcohol. He provided no statements from his treating doctors showing he has overcome this problem. Insufficient time has passed to demonstrate he has overcome this problem.

AG ¶ 23(c) is not established. Insufficient time has passed to demonstrate he has made satisfactory progress in a treatment program.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 security clearance 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 I and G in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines I and G, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not met his burden to establish he has mitigated the security concerns raised by his psychological conditions and alcohol consumption. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-1.c:	Against Applicant
Subparagraphs 2.d-1.f:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge