



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



In the matter of:)
)
) ISCR Case No. 22-02239
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct), G (Alcohol Consumption), H (Drug Involvement and Substance Misuse), and F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 18, 2021. On December 19, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines E, G, H, and F. 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant answered the SOR on December 19, 2022, and requested a decision on the written record without a hearing. In response to a DoD query, he provided clarifying answers in an email dated January 12, 2023. Department Counsel submitted the

Government's written case on April 10, 2023. On April 12, 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 confirmed receipt of the FORM on May 16, 2023, and elected to waive the 30 day period to respond. The case was assigned to me on June 28, 2023.

The SOR (FORM Item 1) and Applicant's Answer (FORM Item 2) are the pleadings in the case. FORM Item 3 (SCA), FORM Item 4 (Interrogatories dated November 13, 2022), FORM Item 5 (November 28, 2022 Credit Report), and Form Item 6 (April 27, 2022 Credit Report) are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted all allegations. His admissions are incorporated in my 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 43-year-old customer service representative. He has worked for his sponsor since August 2021. He is a high school graduate and holds a technical certificate. He received an honorable discharge from the U.S. Army for his service from 2009-2015, which included a deployment to a combat zone. He previously held a clearance in 2009. He was married from 2011-2017 and remarried in 2021. He has one child of his own and two stepchildren. (Item 3 at 7, 12-13, 17, 21, 23-25, and 35; Item 4 at 5.)

SOR ¶¶ 1.a, 3.a and 3.b: Failed to disclose the information set forth in subparagraph 3.a that he had used marijuana with varying frequency from about June 2016 to about November 2021 and purchased marijuana during this period. Applicant answered "No" to Question 23 of his August 2021 SCA, which asked whether he had illegally used any drugs or controlled substances. (Item 3 at 33.) He was interviewed multiple times during the investigative process. During the first interview in September 2021, he discussed alcohol abuse and financial matters, along with other areas. (Item 4 at 13-15.) He was provided additional time to provide documentation to support his answers concerning financial matters and was asked to provide paperwork to the investigator for release of his medical records. (Item 4 at 17.) He subsequently provided consent paperwork for the release of his mental health and alcohol counseling records. After receiving these records, the investigator asked if he had any involvement with illegal drugs. He answered yes and told the investigator that he had used marijuana on a daily basis by himself in his house. (Item 4 at 21.) He explained that the marijuana helped with his anxiety and back pain and that he had to buy the marijuana illegally through a friend. He stated the reason he did not truthfully answer the SCA question about his drug use was because he did not think the investigation would include obtaining his medical records. (Item 4 at 21.) After going through "drug and alcohol rehab" in June 2021 he stated that he tried marijuana again but did not like the feeling. (Item 4 at 6.) His treatment included receiving shots to get him off marijuana and patches. His monthly shots started in August 2021, but he admitted that he continued to use marijuana and had

used marijuana as recently as November 23, 2021. He listed as references three friends who also use marijuana. (Item 4 at 21 and Item 3 at 22-23.)

SOR ¶¶ 1.b, 4.a and 4.b: Failed to disclose debts set forth in subparagraphs 4.a. and 4.b, accounts charged off in the approximate amounts of \$21,054 and \$19,269. Applicant listed one debt on his SCA. When asked if he had any additional qualifying debts by the investigator, he responded no. (Item 4 at 15.) When confronted by the investigator with two charged-off debts, he acknowledged them as private student loans. (Item 4 at 15.) He took these loans out in approximately 1999 and they went into collection in around 2006. He stated he did not disclose the delinquent student loans on his SCA because he did not want to look bad. He had utilized deferments while in the military and later when he took classes between October 2015 and May 2018. He told the investigator since May 2018 he has tried to forget about his student loans. (Item 4 at 15-16 and Item 5 at 3, 8.)

SOR ¶¶ 2.a and 2.b: Consumed alcohol, at times in excess and to the point of intoxication, from about June 2020 to present and received inpatient alcohol treatment from about June 2021 to about August 2021, with a diagnosis of alcohol dependent. Applicant disclosed that he had received inpatient treatment for alcohol dependency and post-traumatic stress disorder (PTSD) from June 2021 through August 2021. (Item 3 and Item 4 at 14.) He acknowledged consuming a bottle of tequila a day from June 2020 until entering treatment in June 2021. In his September 2021 interview with an investigator, he said that his alcohol use was “zero.” (Item 4 at 14.) He stated his inpatient rehabilitation program had given him “the tools needed to abstain from alcohol.” (Item 4 at 14.) In his November 2022 response to interrogatories, he acknowledged that he continued to drink, but said that he had moderated his consumption and only drinks one to two beers socially. He cited a recent Halloween party as an example. (Item 4 at 8.) He indicated he would be involved in an outpatient program. (Item 4 at 14.)

Applicant did not submit any documentary evidence and did not respond to the FORM.

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 E, Personal Conduct

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

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 16(a) is established by Applicant's admissions that he deliberately falsified his SCA responses regarding his marijuana use and delinquent accounts alleged in SOR ¶¶ 1.a and 1.b.

The following mitigating conditions detailed in AG ¶ 17 are potentially relevant:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

AG ¶ 17(a) is not established. Applicant did not promptly attempt to correct his SCA responses. He admitted his omissions only after being confronted with evidence during his security clearance interview.

AG ¶ 17(c) is not established. Applicant's false statements were not "minor," because such statements strike at the heart of the security clearance process. See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). Applicant's false statements were recent and calculated to give him a more favorable security clearance application.

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.

The following mitigating conditions detailed in AG ¶ 22 are potentially applicable:

(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) of alcohol use disorder.

Applicant admitted that he drank a bottle of tequila a day for almost year until 2021. He entered alcohol rehabilitation in 2021 and was diagnosed as alcohol dependent. AG ¶¶ 22(c) and 22(d) apply.

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 has submitted no evidence that he is participating in an ongoing counseling or outpatient treatment program or that he is making satisfactory progress in any treatment program. While he completed an inpatient treatment program in 2021 and declared he had the tools to abstain from alcohol and his consumption was "zero" he acknowledges his alcohol consumption is one to two beers in a social setting. There is insufficient evidence of a clear and established pattern of modified consumption or abstinence. None of the above mitigating conditions fully apply.

Guideline H, Drug Involvement and Substance Misuse

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

Applicant admitted using and purchasing marijuana from about June 2016 to about November 2021 (SOR ¶¶ 3.a and 3.b). AG ¶¶ 25(a) and 25(c) apply.

The following mitigating conditions detailed in AG ¶ 26 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; 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 fully established. Applicant's use and purchase of marijuana may have ended in August 2021 when he entered inpatient treatment. However, after completing treatment, which included monthly shots and patches to allow him to withdraw from marijuana, he continued to use marijuana until at least November 2021. His actions

cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not established. Applicant admitted to using and purchasing marijuana when confronted with evidence by the investigator. He acknowledged that he did not disclose his marijuana involvement because he did not think his medical records would be discovered. His actions after treatment and apparent continued association with others who use marijuana are inconsistent with his statement that he had stopped using marijuana. He did not provide sufficient evidence to establish this mitigating condition.

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his credit reports establish the following disqualifying condition under this guideline: AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under AG ¶ 20 are potentially relevant:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

AG ¶¶ 20(a) and 20(b) are not applicable. Applicant admits he has failed to settle the alleged debts and intentionally ignored them for more than 15 years. His divorce occurred years after his loans became delinquent and before he joined the Army. His statements regarding his handling of the alleged debts show he has not acted responsibly

under the circumstances. None of the above mitigating conditions are established for SOR ¶¶ 4.a or 4.b.

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 E, G, H, and F 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 E, G, H and F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct.

Formal Findings

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

Paragraph 1: Guideline E: Subparagraphs 1.a and 1.b:	AGAINST APPLICANT Against Applicant
Paragraph 2: Guideline G: Subparagraphs 2.a and 2.b:	AGAINST APPLICANT Against Applicant
Paragraph 3: Guideline H: Subparagraphs 3.a and 3.b:	AGAINST APPLICANT Against Applicant
Paragraph 4: Guideline F:	AGAINST APPLICANT

Subparagraphs 4.a and 4.b:

Against 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