



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



In the matter of:)	
)	
)	ISCR Case No. 22-01733
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

September 21, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

On November 18, 2020, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On November 18, 2022, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse); G (Alcohol Consumption); and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines, effective on June 8, 2017.

Applicant answered the SOR on February 7, 2023 (Item 2), and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on March 9, 2023. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 5. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. He received the FORM on March 23,

2023, and did not respond. Items 1 through 5 are admitted into evidence. The case was assigned to me on July 21, 2023.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in “all” the Paragraphs of the SOR, without any explanations. Applicant is 40 years old, unmarried, and has no children. He has worked for a defense contractor since January of 2020. (Item 3 at pages 7, 13~14 and 27.).

Guideline H: Drug Involvement and Substance Misuse & Guideline E: Personal Conduct

1.a. and 3.a. Applicant admits to using marijuana with varying frequency from about March of 2000 until June of 2022, a period of about 22 years and ending about 15 months ago.

1.b. and 3.a. Applicant admits to purchasing marijuana from about March of 2020 until October of 2022, a period of about 18 months and ending only about 11 months ago.

1.c. and 3.a. Applicant admits to using hallucinogenic mushrooms with varying frequency from about March of 2005 until December of 2020, a period of more than 15 years.

Guideline G: Alcohol Consumption & Guideline E: Personal Conduct

2.a. and 3.b. In April of 2002, Applicant was arrested, charged, and subsequently found guilty of Driving Under the Influence (DUI).

2.b. and 3.b. In October of 2003, 18 months later, Applicant was arrested, charged, and subsequently pled guilty to DUI-Extreme. As a result of this second alcohol-related conviction, Applicant was required to attend 40 hours of alcohol treatment, and have an interlock device installed in his vehicle.

2.c. and 3.b. In February of 2004, only four months later, Applicant was again arrested, charged, and subsequently pled guilty to DUI-Extreme. As a result of this third alcohol-related conviction, Applicant was sentenced to 60 days' work release, drivers' license suspension, and required have an interlock device installed in his vehicle.

2.d. and 3.b. Applicant continues to consume alcohol on a daily basis and to the point of intoxication.

Guideline E: Personal Conduct

3.a. and 3.b. have been discussed, above.

3.c. Applicant admits that he knowingly falsified his November 2020 e-QIP, in answer to “Section 22 – Police Record . . . (EVER) been charged with an offense involving alcohol,” by answering “No.” I find this to be a willful falsification of a relevant question about his alcohol use.

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (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

Appellant smoked marijuana over two decades, ending in June of 2022. His last purchase of marijuana was only 11 months ago. Therefore, AG ¶ 25 (a) and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

None of these conditions apply. Applicant's long history of drug misuse is too recent to find that it is not of present security significance. The Drug Involvement and Substance Misuse guideline is found against Applicant.

Guideline G: Alcohol Consumption

The security concern relating to the guideline 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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

- (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; and
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant has three alcohol-related incidents between April of 2002 and February of 2004. He continues to consume alcohol, to the point of intoxication, on a daily basis.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Two conditions may apply:

(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; and

(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.

Neither of these conditions apply. Applicant has a severe drinking problem. Alcohol Consumption is found against Applicant.

Guideline E: Personal Conduct

The concern under this guideline 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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's deliberate falsification of his e-QIP, the following disqualifying condition applies:

AG ¶ 16 (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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admits his knowing and willful falsification of his November 2020 e-QIP. None of the mitigating conditions under AG ¶ 17 apply. Personal Conduct is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant did not mitigate the security concerns arising from his drug involvement and substance abuse, alcohol consumption, and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a~1.c:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a~2.d:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a~3.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge