



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 22-01656

**Appearances**

For Government:  
Andrew Henderson, Esquire, Department Counsel

For Applicant:  
John V. Berry, Esquire  
Berry & Berry, PLLC

September 14, 2023

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his initial Electronic Questionnaire for Investigations Processing (e-QIP) on November 12, 2020. (Government Exhibit 1.) On September 14, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption) and I (Psychological Conditions). 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 (AG) effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on September 20, 2022, with attachments. He also requested a hearing before an administrative judge in his Answer. Department Counsel was prepared to proceed on November 8, 2022. The case was assigned to me on November 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 28, 2022. The case was heard on January 18, 2023.

The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant Exhibits A through F, which were also admitted without objection. The record remained open for the receipt of additional documentation. The Government offered Government Exhibit 4 on January 19, 2023, which was admitted without objection. Applicant timely submitted Applicant Exhibits G through L on February 3, 2023, which were all admitted without objection. DOHA received the transcript (Tr.) of the hearing on January 27, 2023. The record closed on February 3, 2023.

### **Findings of Fact**

Applicant is 41 years old and married with two children. He has a bachelor's degree. Applicant has been employed by a defense contractor (Company A) since March 2020 as a release engineer and is attempting to obtain a security clearance in relation to his employment. (Tr. 35-36; Government Exhibit 1 at Sections 12, 13A, and 17; Applicant Exhibit A.)

#### **Paragraph 1 (Guideline G: Alcohol Consumption)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he abuses intoxicants to excess. He denied both allegations in this paragraph with explanations.

Applicant has worked consistently as a software engineer since graduating from college in 2006. He worked for Company B, a major IT company, from February 2015 to March 2020. Up through 2017 his work was exemplary, and his evaluations stated he "meets all expectations." Beginning in 2018, however, he began receiving marginal evaluations. He stated that at this point in time he began to use alcohol and marijuana to cope with job stress. His actions did not relieve the job stress. By early 2019 he was having serious emotional problems due to job and home stress, and the impact of his increased alcohol and marijuana use. This description of his use is attested to by both Applicant and his wife. At this point he voluntarily took a 30-day leave of absence from Company B to attend an outpatient treatment program for a stress-induced mood

disorder, as well as alcohol and marijuana use. While worthwhile, he did not feel that he had received sufficient treatment to resolve his issues. Accordingly, he received an additional 60 days of outpatient treatment. He feels that the treatment was successful. (Tr. 16-18, 22, 28-30, 37, 61, 73-74; Applicant Exhibit D.)

Soon after returning to Company B after his three-month leave of absence Applicant received a job offer from Company A. As stated, he began working there in early 2020. He testified that he enjoys the work and finds it very fulfilling. His evaluations at this job have been outstanding, according to his current and former supervisors. (Tr. 75-88; Applicant Exhibit F at 1-2, 6.)

The programs Applicant attended recommended that he not drink alcohol. He did not drink alcohol for several months after finishing his program. He eventually began to drink again and continued to drink some amount of alcohol several times a week until November 2022. At that point he made the decision to stop drinking altogether and began attending a recovery program. He testified that the program is assisting him in his recovery. (Tr. 18-19, 42-46, 62, 68-70; Applicant Exhibits J and K.)

Applicant continues to experience stress, even in the new job. He began seeing a psychiatric nurse practitioner (PNP) in January 2022 due to depression and anxiety. In May 2022 the therapist reported, "Patient [Applicant] states that he stayed sober for several days, but then would binge drink on a bottle of whiskey or pack of beer at a sitting. Patient continues to report cravings for alcohol." (Tr. 63-65; Government Exhibit 4 at 4; Applicant Exhibit I at 2.)

Applicant Exhibit I has additional treatment notes from September 2022 at page 2. The PNP stated:

Patient [Applicant] remained on Pristiq, no longer taking naltrexone. States that it worked well at first, then it seemed to stop working for etoh [alcohol] cravings. Has had some nights where he drank more than he desired, but not getting overly intoxicated. Feeling much better with mood, denies any down days like he used to have. [Reports] working full time, busy with family. Some anxiety with life stress – able to tolerate.

Applicant testified that he does not feel he currently has a problem with alcohol. He further testified that he never told the therapist that he engaged in binge drinking. He admitted drinking a fifth of whiskey within three days. He did make an arrangement with his wife that she would tell him if she felt that he was drinking too much. She did tell him several times about excessive drinking last year up to about August 2022. (Tr. 23-26, 44-45, 47-48, 66-68, 70-71.)

Applicant received an evaluation from a DoD psychological consultant (Dr. One). His report is dated July 6, 2022, and is Government Exhibit 3. (Tr. 46-47.) That report stated the following:

**DIAGNOSTIC IMPRESSION:** The Subject [Applicant] was referred for evaluation to determine if he meets criteria for any condition which would jeopardize his judgment, reliability, or trustworthiness. Specifically, his history of marijuana and alcohol use was of concern. Based upon the increased frequency and amount used prior to his voluntary admission to treatment, the Subject likely met criteria for an alcohol use disorder and a cannabis use disorder. He currently does not appear to meet criteria for the marijuana use disorder since his reported abstinence during the application process for his current position in early 2020. However, according to his current medical records, Subject continues to suffer from alcohol cravings and engages in binge drinking to cope with work stress despite his stated desire to be sober. Personal restraint has not appeared to be sufficient to curb his consumption behaviors and he was most recently prescribed Naltrexone to mitigate cravings. As such, it appears that the diagnosis of alcohol use disorder is still current and applicable to the Subject's profile. The diagnoses below attempt to capture the Subject's present level of functioning.

**DIAGNOSIS:**

Alcohol use disorder, moderate	(F10.20)
Unspecified depressive disorder, with anxious distress	(F32.9)
Cannabis use disorder, moderate, in sustained remission	(F12.20)

**PROGNOSIS:** The Subject's prior history of alcohol and marijuana use and subsequent treatment raised concerns over the Subject's ability to have good judgment, reliability, and trustworthiness. Having an active diagnosis of either would bring inherent risk to those factors. The evaluation did not reveal that the Subject is suffering from any ongoing marijuana use. If his reporting of abstinence is accurate, then it is not likely a risk factor and can be dismissed as a matter of consideration. However, the information from his current prescriber indicated that he still struggles with binge drinking, cravings, and has difficulty staying sober. His consumption appears to be for similar reasons now as it was when he submitted himself for voluntary treatment (ie. [sic] work reviews). This information indicates that the Subject's alcohol use disorder is current, without a sustained period of abstinence, and therefore represents an inherent risk to his judgment, reliability, and trustworthiness.

Applicant was also evaluated by a psychologist (Dr. Two), who was retained by Applicant. (Tr. 48-49.) He submitted a report dated December 5, 2022. (Applicant Exhibit E.) That report stated:

**Conclusion:**

[Applicant] has enjoyed mild to moderate drinking of beer and whiskey for much of his adult life. It became a problem for him three years ago, when his drinking increased, and combined with cannabis use, sleep deprivation (due to his youngest child having sleep problems and requiring care at night) and stress at work, he developed a mood disorder for which he sought and received successful treatment. It is unlikely that this mood disorder (Substance Induced Mood Disorder) will reoccur. He sleeps well, his child is doing well, he no longer smokes marijuana, and his work situation has dramatically improved.

Treatment three years ago was successful. He has learned to maintain regular mild to moderate use of alcohol. He currently drinks mildly, between one and three times a week, on or two drinks on each occasion. To have a diagnosed alcohol condition, a person must meet at least two of eleven criteria over the last twelve months. The only sign that [Applicant] shows are occasional cravings, his drinking has never affected any important life functions, and he has never developed tolerance or suffered withdrawal symptoms. Mild to moderate alcohol consumption, without any other challenges, is not an alcohol problem and does not cause other difficulties.

Dr. Two submitted an **Addendum** dated January 20, 2023. (Applicant Exhibit G.) It states:

I would like to clarify that I reviewed that entire record, including notes from [PNP] [Applicant Exhibit I). In February 2022, she noted that alcohol use was not affecting any significant life function. In May 2022, she noted increased alcohol use, that again did not affect work or any other important life functions. This does not qualify as a disorder. At this time, she also used the term binge drink, which is incorrect, as [Applicant] emphatically states that this was incorrect, that he would not drink an entire bottle in one sitting, but over the course of several days. In September 2022, she also reported some alcohol use, again not affecting work, relationships or any other important life skill. Throughout her record, she reports that medication helped him maintain his mood. I stand by my impression that he has never qualified as having an alcohol disorder based on the DSM 5 definition. Though he drinks sometimes to excess, this is at home, not at work, does not affect his relationships, work or any other life function, he is not

dependent, has never developed withdrawal symptoms, has never missed work due to alcohol use, does not currently experience cravings.

## **Paragraph 2 (Guideline I: Psychological Conditions)**

The DoD CAF alleged in this paragraph of the SOR that Applicant is not eligible for access because he has an emotional, mental or personality condition that can impair his judgment, reliability or trustworthiness. He denied SOR 2.a. He admitted in part and denied in part SOR 2.b. He denied SOR 2.c.

SOR paragraph 2.a. references Applicant's receiving mental health treatment as part of the factual statement. Paragraph 27 of the Adjudicative Guidelines (AG), which sets forth the concern under this guideline, states in pertinent part, "No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling." In addition, the Defense Counterintelligence and Security Agency factsheet, "Mental Health and Security Clearances," states in part, "Seeking mental health services does not affect one's ability to gain or hold security eligibility. Adjudicators regard seeking necessary mental health treatment as a positive step in the security clearance process." (Defense Counterintelligence and Security Agency *Mental Health and Security Clearances*, [https://www.dcsa.mil/Portals/91/Documents/pv/DODCAF/resources/DCSA-FactSheet\\_Mental-Health\\_SecurityClearances-Oct21.pdf](https://www.dcsa.mil/Portals/91/Documents/pv/DODCAF/resources/DCSA-FactSheet_Mental-Health_SecurityClearances-Oct21.pdf) (accessed September 5, 2023.)

2.a. There is little to no support for the allegation that Applicant has been diagnosed with bipolar disorder. The only evidence is an affirmative statement by him in answer to Section 21 "Psychological and Emotional Health" on Government Exhibit 1 that asked whether he had "EVER been diagnosed by a physician . . . with . . . bipolar mood disorder." He stated that he answered the question this way because of a statement made to him by one of his therapists during his first 30-day outpatient treatment that some of his conduct could indicate a bipolar disorder. However, there is no diagnosis of bipolar disorder found anywhere in the available medical records. He testified that both Dr. One and Dr. Two stated they did not believe Applicant suffered from a bipolar disorder. (Government Exhibit 1; Tr. 20, 49-52.)

2.b. Applicant admitted, and the available medical records confirm, that he suffers from depression and anxiety. He is receiving therapy for it, and is also on medication. He further stated that therapy and medication are helping control his depression and anxiety. He is also attempting to obtain additional individual therapy with a psychologist. He is currently on a waitlist for this provider. (Tr. 52-56; Government Exhibits 3 and 4; Applicant Exhibits I and L.)

2.c. The Government alleged that Doctor One's diagnosis of Applicant as currently suffering from Alcohol Use Disorder, Moderate, is cognizable under this guideline as well. Applicant denied this allegation.

## **Mitigation**

Applicant has been a successful employee at Company A. His current supervisor testified and supplied a letter on his behalf. He has known Applicant since 2015 at Company A and Company B, and has been his supervisor at both companies for more than three years. He described Applicant as a "great" employee. He further testified that he has not seen any evidence of alcohol or mental health issues with Applicant. He further stated that he has entrusted Applicant with large projects and stated he trusts Applicant not to reveal classified or proprietary data. (Tr. 77-88; Applicant Exhibit F at 6.)

Another supervisor of Applicant's at both Company A and Company B submitted a very laudatory letter on his behalf. He described Applicant as having "the highest integrity." (Applicant Exhibit F at 1-2.)

Peer feedback from fellow employees of Company A in 2022 was extremely favorable. (Tr. 56-59; Applicant Exhibit B.)

## **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, "Any 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, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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, “Any 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**

### **Paragraph 1 (Guideline G: Alcohol Consumption)**

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

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 three conditions that could raise security concerns and may be disqualifying in this case:

(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 has a history of excessive alcohol use, including binge drinking, which continued through November 2022. He was diagnosed by a DoD mental health consultant with Alcohol Use Disorder, Moderate in July 2022. He received treatment for a mood disorder in 2019, which included a recommendation that he not consume alcohol. All three of the cited disqualifying conditions apply, thereby shifting the burden to Applicant to mitigate them.

The guideline at AG ¶ 23 contains four conditions that could mitigate alcohol consumption security concerns.

(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 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.

None of these mitigating conditions was sufficiently established by the evidence in this case. Applicant has had a problem with alcohol for several years. He took a three-month leave of absence from his job in 2019 to obtain mental health treatment for stress, which included excessive alcohol use. He admitted that he still uses alcohol as a means to self-medicate during times of stress or depression through late 2022. I have considered all the medical records contained in this case and have incorporated them in my findings. Insufficient time has passed since Applicant stopped drinking. A finding on Applicant's behalf cannot be made at this point in time. Guideline G is found against Applicant.

## Paragraph 2 (Guideline I: Psychological Conditions)

The security concern relating to the guideline 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.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Three conditions may be 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
- (c) voluntary or involuntary inpatient hospitalization.

With regard to Guideline I, no adverse inference has been drawn because of Applicant's obtaining mental health treatment or his hospitalizations. Specifically, AG ¶ 28(c) is not applicable to this case.

As stated above, there is no direct evidence that Applicant has ever been diagnosed with a bipolar disorder. Accordingly, based on the available record, SOR 2.a is found for Applicant.

Turning to the other two allegations. The record shows that Applicant has been suffering from chronic depression and stress for years. In addition, he was diagnosed by a DoD mental health consultant as having a current diagnosis of Alcohol Use Disorder, Moderate. AG ¶ 28(a) applies to this case.

In 2022 a DoD mental health consultant found that Applicant had a condition that may impair his judgment, stability, reliability, and trustworthiness. AG ¶ 28(b) applies.

The Government has met its burden under the Directive to establish the above disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate them.

The guideline at AG ¶ 29 contains five conditions that could mitigate security concerns. Four of them have possible application to this case:

(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.

SOR 2.b. As stated, Applicant has been suffering with depression and stress for many years. He is undergoing treatment and by all indications the depression is controlled with therapy and medication. There is no indication of a current problem. AG ¶¶ 29(a), (b), and (e) apply. This allegation is found for Applicant.

SOR 2.c. My discussion under Guideline G applies to this particular allegation. AG ¶ 29(b) minimally applies because Applicant has recently entered a recovery program. However, as stated above insufficient time has passed to make a finding that he has resolved his alcohol issues.

AG ¶ 29(c) does not apply because there is not a current mental health finding that the previous condition is under control or in remission and has a low possibility of recurrence or exacerbation. I have considered the statements by both psychologists. I do not find Doctor Two's analysis sufficient to overcome that of Doctor One under the circumstances of this case.

Applicant is highly commended for all he has done to improve his mental health over the years. However, the strictures of the Guidelines as written require more from Applicant in terms of consistency of treatment and a current and favorable prognosis that

rebutts the current report by the Government's mental health consultant. Given the current state of the record I cannot find that Applicant has sufficiently mitigated the security concerns raised by the evidence in this case. Guideline I is found against Applicant.

### **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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has made strides in resolving his mental health issues, and related alcohol issues. However, the present record evidence does create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

### **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 G:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline I:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant
Subparagraph 2.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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge