



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



In the matter of: )  
)  
) ISCR Case No. 22-01880  
)  
Applicant for Security Clearance )

**Appearances**

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

11/09/2023

---

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and substance misuse, Guideline E, personal conduct, and Guideline G, alcohol consumption. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 7, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse, Guideline E, personal conduct, and Guideline G, alcohol consumption. The action was taken 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) effective on June 8, 2017.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on September 15, 2023. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2023. I convened the hearing as scheduled on October 26, 2023. The Government offered exhibits (GE) 1 through 7. Applicant and two witnesses testified on his behalf. He offered Applicant Exhibit (AE) A. There were no objections to any exhibits offered, and they were admitted into evidence. The record was held open until November 7, 2023, to allow Applicant to submit additional exhibits. He submitted AE B and C. There were no objections, and they were admitted, and the record closed. DOHA received the hearing transcript on November 2, 2023.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. His admissions have been incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He completed training as an emergency medical technician in 2005 but was unable to find a job in his field because he did not have experience. He was married from 2005 to 2006, which ended in divorce. He does not have children. He has worked for his current employer, a federal contractor, since January 2022. (Tr. 32-35; GE 1)

Applicant testified that in about 2016, after his father passed away, he began consuming alcohol excessively. He would drink to intoxication regularly. He would go to bars and have four to five drinks. He kept a bottle of liquor in his car in case he went out and did not want to pay for expensive drinks at a bar. (Tr. 42-44, 59)

Applicant was arrested for driving under the influence of alcohol in March 2021. He took a breathalyzer and recorded .216% and .221%. Applicant testified that he had consumed liquor in his vehicle after a difficult day at work. He drank it in a parking lot. While driving, there was a tire tread in the road, and he swerved and lost control of his vehicle. He was told he hit a post but did not recall that he did. He was arrested a short time later at a fast-food restaurant. He admitted he was intoxicated when he was arrested. He also had in his possession some pills that were prescribed to him, but the prescription was expired, and he had put them in a smaller container that was unmarked. (Tr. 44-48; GE 1, 2, 3, 4, 5)

Applicant pled guilty to the DUI offense, and the charge of possession of an unmarked expired prescription was withdrawn. He was given 18 months' probation, a fine, court-ordered alcohol and drug counseling, and he was required to have an interlock on his vehicle for 12 months. He completed all the terms of the probation. (Tr. 48-49; GE 6; AE B)

Applicant credibly testified that this was a wakeup call for him, and he never wanted to spend another day in jail. He essentially stopped consuming alcohol after his arrest and has only had three or four drinks since then at family gatherings. He no longer wants

to drink alcohol and has declined it numerous times when offered. He viewed his arrest as a life-changing event. (Tr. 35-40)

Applicant participated and completed alcohol and drug counseling as mandated by the court. He was an outpatient and participated in group therapy. He found it very helpful and was provided alternatives to handling stress. He does not crave alcohol. (Tr. 57-58; GE 5, 6)

Applicant testified that he was in a toxic relationship with his fiancée during the time he was drinking. His mother was ill and passed away in May 2022. He and his fiancée broke up and that has had a positive effect on him. He is an only child, and he inherited his mother's house. He spends his time working on the house. He also has been in a stable relationship for the past six months. His girlfriend does not consume alcohol or drugs. Through his commitment to moderate his consumption he has not had any problems related to alcohol. He does not have any in his house, except some cooking wine. He has had no other alcohol-related incidents and does not foresee any in his future because of his abstinence. (Tr. 38-40, 49-52, 54)

In about June 2021, Applicant was prescribed medical marijuana, which is legal in the state where he lives. He would purchase it about twice a month. When he completed his security clearance application (SCA), he did not disclose his use because he viewed it as a prescription drug, and it was not illegal in his state. When he was confronted by the investigator, he readily admitted he used medical marijuana and was unaware that it was illegal under federal law. He believed he was answering the drug questions on his SCA truthfully. I find he did not deliberately fail to disclose his illegal drug use under federal law. (Tr. 40-42, 50-52; GE 1, 2)

Applicant testified that he had been using medical marijuana regularly for relaxation, anxiety, to help him sleep, and pain management. He explained that at one time he weighed more than 500 pounds and lost weight through surgery. He developed back pain due to his weight and that was one of the reasons for his marijuana use. He admitted he did not stop using it immediately after learning it was illegal because he was weaning himself off it. During this March 2022 interview with a government investigator, he said he would prefer not to relinquish his medical marijuana card, and he intended to use marijuana in the future. He also said that he was willing to cease using it to keep his job. At his hearing, he credibly stated that he will not use marijuana in the future and will find alternative means for controlling his issues. He stopped using it about six months ago. He said he is willing to destroy his medical marijuana card and not renew it. He fully understands the importance of remaining drug free. Applicant credibly testified that his life has turned around, and he is ready to move forward. Post-hearing, he provided a shredded copy of his medical marijuana card to show in good faith he did not intend to use marijuana again or renew his prescription. (Tr. 42, 50-51, 54-57; GE 2; AE C)

Two witnesses testified on behalf of Applicant. Both have served extensively in law enforcement for more than 27 years each, including as detectives, investigators, and police officers. Both have extensive experience in investigating narcotics and alcohol-related offenses. One was his former supervisor before her retirement and the other is

the current supervisor of security where he works. They were both aware of his DUI conviction. They describe Applicant as a model employee. He was never observed being under the influence of drugs or alcohol. He is a punctual, responsible, reliable, dependable, and trustworthy employee. They have seen his commitment to his lifestyle change. He has taken full responsibility for his conduct and has learned from it. They believe that he made a mistake, and he is worthy of a second chance. (Tr. 17-30)

Applicant provided a letter from a coworker. She believes Applicant is professional, reliable, punctual, honest, friendly, and trustworthy. He is serious and conscientious about security and following the rules and policies of the employer. He willingly goes above and beyond what is required in his duties. (AE A)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 E: Personal Conduct**

AG ¶ 15 expresses the security concerns for personal conduct:

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. I find the following 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, aware benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant testified that when he completed his SCA, he believed that because he had a medical marijuana card issued in a state where it is legal, he did not have to disclose this information on his SCA. He later learned during his background interview that use of marijuana is illegal under federal law. I found his testimony credible and find he did not deliberately provide false information on his SCA. None of the disqualifying conditions apply and I find in his favor under Guideline E, personal conduct.

### **Guideline H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant began using marijuana regularly beginning in about June 2021 after he obtained a medical marijuana card. He purchased marijuana about twice a month. At the time he was interviewed by a government investigator in March 2022, he intended to continue to use marijuana. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under 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 to overcome the problem, and has established a pattern of abstinence . . .

Applicant credibly testified that he no longer uses marijuana. He is using alternative methods to deal with his anxiety and back issues. He said he did not stop using marijuana immediately when he learned it was illegal under federal law because he was weaning himself off it. He stopped using it about six months ago. I am convinced he will not use it in the future. He has shredded his medical marijuana card. Obviously, he could obtain a new one, but I believe Applicant fully understands the importance of remaining drug free. Applicant credibly testified that his life has turned around, and he is ready to move forward. I have considered all of the evidence and find AG ¶¶ 20(a) and 20(b) apply.

## **Guideline G: Alcohol Consumption**

AG ¶ 21 expresses the security concern for alcohol consumption: 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 conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(a) alcohol-related incidents away from work, such as driving 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.

After Applicant father passed away, he began consuming alcohol in excess and to the point of intoxication frequently from about 2016 to March 2021, when he was arrested for DUI. He pleaded guilty to the DUI. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

(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 or 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 credibly testified that his DUI arrest and conviction served as a wakeup call for him, and he never wanted to spend another day in jail. He essentially stopped consuming alcohol after his arrest and has only had three or four drinks since then at family gatherings. He no longer wants to drink alcohol and has declined it numerous times when offered. He viewed his arrest as a life-changing event.

Applicant participated and completed alcohol counseling as mandated by the court. He was an outpatient and participated in group therapy. He found it very helpful and was provided alternatives to handling stress. He does not crave alcohol.

Applicant testified that he was in a toxic relationship with his fiancée during the time he was drinking. His mother was ill and passed away in May 2022. He and his fiancée broke up and that has had a positive effect on him. He spends his time working on his house. He also has been in a stable relationship for the past six months. His girlfriend does not consume alcohol or drugs. Through his commitment to moderate his consumption he has not had any issues with alcohol. He does not have any in his house, except some cooking wine. He has had no other alcohol-related incidents and does not foresee any in his future because of his abstinence. I found Applicant's testimony credible, and the above mitigating conditions apply.

### **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 the 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 E, G, and H in my whole-person analysis.

Applicant met his burden of persuasion. The record evidence does not leave me with questions or doubts as to Applicant's eligibility and suitability for a security clearance.



For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct.

### **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 G:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Carol G. Ricciardello  
Administrative Judge