



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00656
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

11/13/2023

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**Decision**

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Lokey Anderson, Darlene D., Administrative Judge:

On November 12, 2022, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On May 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCAS CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct; and Guideline E, Personal Conduct. 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on May 19, 2023, and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 24, 2023, and the hearing was convened as scheduled on October 5, 2023. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered no exhibits. Applicant

testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 16, 2023.

### **Findings of Fact**

Applicant is 42 years old, and unmarried with no children. He obtained a high school diploma and completed some college. Applicant is employed by a defense contractor as a Aircraft Structural Mechanic. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline J – Criminal Conduct**

The Government alleges that Applicant has engaged in criminal activity that creates doubt about a person's judgment, reliability, and trustworthiness and calls into question a person's ability or willingness to comply with laws, rules, and regulations.

#### **Guideline E – Personal Conduct**

The Government alleges that Applicant has engaged in conduct which shows a lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant has a history of criminal conduct that include three Driving Under the Influence of Alcohol (DUI) convictions, and two convictions for Possession of a Controlled Substance, all occurring over an 18-year span. Applicant admitted each of the allegations set forth in the SOR, except 2.a., which he failed to answer, and 2.b., which he denied. Applicant began working for a defense contractor in October 2022. He applied for a security clearance for the first time in November 2022.

Applicant started using marijuana in about 1996, at the early age of 15, while in high school. In about May 2005, he was charged with Possession of a Controlled Substance, (methamphetamine) and Possession of Marijuana. Applicant's car was pulled over by police and during the search of his vehicle, they found marijuana and methamphetamine. Applicant claimed the methamphetamine was not his. He was convicted of Possession of Marijuana. (Tr. p. 21.) He was placed in a diversion program for the charge of Possession of a Controlled Substance and placed on probation for a period of five years.

In about June 2007, Applicant was charged with Driving Under the Influence of Alcohol. Applicant testified that prior to the arrest, he consumed about a case of beer and a bottle of liquor. He was convicted of the offense, placed on probation for a period of five years, and ordered to complete an 18-month alcohol program. Following the arrest, Applicant tried to stop drinking and was completely sober for about one year. (Tr. p. 39.) Then, little by little he returned to heavy drinking. (Tr. pp. 42-43.)

In May 2008, Applicant was charged with Possession of Marijuana. Applicant was in violation of his five-year probation imposed by the court in 2005 for his earlier conviction. Applicant was convicted of this offense, and placed on probation for another five years.

In about October 2009, Applicant was charged with Driving Under the Influence of Alcohol. He was convicted of the offense, placed on house arrest, placed on probation for a period of five years, and ordered to complete an 18-month alcohol program. Following this arrest, Applicant stopped drinking for about a year and a half. (Tr. p. 44.) When he started consuming alcohol again, this time it was different. He would force himself not to leave the house if he was drinking alcohol. He would only buy a six or twelve pack at a time if he went to the store. This pattern has continued to the present. He reduced his alcohol consumption but continued to drink and at time to excess.

In June 2018, Applicant was charged with Driving Under the Influence of Alcohol. Applicant explained that he was out of town and went to visit a friend who does not drink. Applicant wanted to relax and celebrate his birthday, so he purchased a six pack of beer and consumed it. Later that evening, Applicant went to the store to purchase another six pack of beer and was pulled over by police. He was intoxicated at the time. He was convicted of the offense, ordered to complete a DUI program, and sentenced to 10 days in jail and five years of probation. He has recently completed probation for the offense. Following this arrest, he was able to remain sober for five or six months before returning to consuming alcohol. Now, he only drinks socially.

In response to interrogatories dated April 10, 2023, Applicant stated that he last consumed alcohol in June 2018. This statement is not accurate since Applicant returned to drinking some five or six months following the 2018 arrest for DUI. (Tr. p. 51.) He deliberately failed to disclose that he consumed alcohol approximately monthly and that he continues to consume alcohol to the present.

Applicant has not been formally diagnosed as an alcoholic, but he has seriously contemplated the issue. This is the main reason he tries to abstain from drinking because he does not want it to control his life. He has not received inpatient or outpatient treatment for his alcohol problem but he has thought about it. He has not received therapy or counseling for his drinking problem. He has not attended an Alcoholics Anonymous (AA) meeting for about a year.

Applicant stated that he is trying to improve himself and his lifestyle. Since 2018, he has obtained his high school diploma. He graduated from an apprenticeship program through work, and he enrolled in community college to try to get an Associate Degree in Airframe Structures. He has also attended AA meetings and church men's groups.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 applies for access to classified information 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 access to classified information. 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 information.

Section 7 of EO 10865 provides that adverse 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 J: Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
- (d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant committed five violations of the law, each time resulting in a conviction. He was convicted of three DUI's and two convictions for Possession of Controlled substances. In 2007, he also violated his five-year probation for DUI imposed by the court in 2005. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance, with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

First, Applicant is commended for completing the court-ordered requirements associated with each of his convictions. He is also commended for the progress he has made in obtaining his education to further improve his life. It is also noted that he is trying to change his past lifestyle patterns by getting involved in church and finding other distractions unrelated to drinking. However, Applicant's criminal history involving alcohol and drugs remains very concerning. His most recent conviction occurred in 2018, and his five-year probation has only recently been satisfied. He stated that he continues to consume alcohol even though following each of his three DUI convictions he tried to stop drinking. He was successful for a period of time, before he relapsed and started consuming alcohol again. Presently, he still consumes alcohol and battles to maintain control of himself when he is under the influence. In the future, with hard work and discipline, and possibly using resources available to him such as treatment programs, counseling, therapy, and others, Applicant may be able to conquer this problem and remain alcohol free. However, at this time, his long history of criminal conduct involving drugs and alcohol does not show the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information and it presents doubts concerning his ability or willingness to abide by law, rules, and regulations. None of the mitigating conditions establish full mitigation.

### **Guideline E - Personal Conduct**

The security concern for the personal conduct 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 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 conditions are 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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse

determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (2) any disruptive, violent, or other inappropriate behavior; and
- (3) a pattern of dishonesty or rule violations.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions under AG ¶ 17 below:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions are applicable. First, Applicant's criminal history of drug and alcohol abuse involving three DUI's and two marijuana possession convictions show poor judgment, unreliability, and untrustworthiness. Then, Applicant was not accurate in response to his interrogatories dated April 10, 2023, concerning the date he last used alcohol. Applicant stated in his interrogatories that he last consumed alcohol in June 2018. This was not true. He testified that following his last DUI arrest in 2018, he was able to abstain from alcohol for about five or six months before he started drinking again. He currently still consumes alcohol. There is no excuse for this dishonesty which calls his character into question. Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and trustworthiness. To be entrusted with the privilege of holding a security clearance, one is expected to be honest and truthful at all times, and to know and understand the rules and regulations that apply to them, and to always abide by those rules. Under the particular facts of this case, Applicant has not demonstrated this awareness. His drug and alcohol history as well as his inability to be truthful in answering a question in response to the interrogatories, shows a lack of honesty, integrity, good judgment or reliability. At this time, Applicant does not meet the qualifications for access to classified information.

### **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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline J and Guideline E in my whole-person analysis. To hold a security clearance is a privilege and not a right. While holding a security clearance one is expected to show honesty, responsibility and good judgment at all times. Applicant has not demonstrated a positive pattern of conduct and the level of maturity needed for access to classified information. At this time, he is not an individual with whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Right now, he is not qualified for access to



classified information, nor is it certain that sensitive information will be properly protected. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Criminal Conduct and Personal Conduct security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a, through 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a, and 2.b:	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.

Darlene Lokey Anderson  
Administrative Judge