



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



In the matter of:)
)
) ISCR Case No. 23-00298
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2024

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines G (alcohol consumption), I (psychological conditions), and E (personal conduct). Clearance is denied.

Statement of the Case

On April 30, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 16, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, I, and E. The SOR detailed reasons why the DCSA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 6, 2023, Applicant submitted his Answer to the SOR.

On May 25, 2023, Department Counsel was ready to proceed. On May 31, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 6, 2023, DOHA issued a notice of hearing scheduling the hearing for June 28, 2023.

The hearing was convened as scheduled. Department Counsel submitted Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified, did not call any witnesses, and did not offer any documentary evidence. On July 13, 2023, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 58-year-old electronics mechanic employed by a defense contractor since September 2013. He seeks to retain his Secret security clearance which is a requirement of his continued employment. He stated that he has continuously held a clearance since he was 17 years old when he enlisted the U.S. Air Force, discussed below. (Tr. 13-15) When asked what his company's response would be if he lost his clearance, he stated "I don't know. Find yourself a good space under the bridge, I guess." (Tr. 49)

Applicant graduated from high school in June 1983. He served in the Air Force from September 1983 to April 1991 as a navigational aids equipment specialist and was honorably discharged as a sergeant (pay grade E-4). (Tr. 16-18; GE 1) He has been employed by various defense contractors until the present since his discharge from the Air Force. (Tr. 18; GE 1) He married in March 1985 and has been separated from his wife since March 1994. Applicant described the current status with his wife as "reasonable." He has three adult children. (Tr. 19-21; GE 1) His wife is a disabled veteran and two of his adult children live with and care for her. Applicant does not provide support for his wife. (Tr. 21-22)

Alcohol Consumption/Psychological Conditions

The SOR allegations under these concerns are established by Applicant's April 30, 2019 SF-86; his Office of Personnel Management (OPM) Personal Subject Interview (PSI) conducted on June 21, 2019 with follow-on contact; his medical records, various dates; his August 12, 2022 summary of psychological evaluation by a licensed clinical psychologist; his April 6, 2023 SOR admissions to all allegations alleged under these concerns; and his hearing testimony. (GE 1 through 4; SOR Answer)

The following is a summary of the three SOR allegations raising the alcohol consumption concerns.

SOR ¶ 1.a – Alleged that Applicant was hospitalized for about one week in February 2018 and diagnosed with alcohol use disorder, mild to moderate/abuse (Dr. K). The program recommend that Applicant attend Alcoholics Anonymous meetings and abstain from alcohol.

Applicant was hospitalized as a result of a "5150 hold" due to being a danger to self and others after expressing suicidal and threatening ideations to his coworkers. (Tr. 23) He explained that he had transitioned from a supervisory position to a non-

supervisory position at his request within his company “to be a worker, to have a good time like everybody else.” (Tr. 24) However, his company “continued to force responsibilities on me and basically coerced me without the pay or with the support to being a leader.” (Tr. 24) This situation deteriorated and led to Applicant’s hospitalization in 2018 as alleged in the SOR allegations. Before this 2018 hospitalization, Applicant had not received any sort of psychological or psychiatric counseling. He testified that he was, however, prescribed Prozac at some point prior to 2018, adding that he could not “run around as a vegetable and do that.” (Tr. 24-26, 29-30)

Regarding his inability to recall dates and times, he stated, “I’ve worked six days a week, 12 hours a day for the last 30 years, it’s all a blur.” (Tr. 27, 29) Applicant stated that he stopped taking Prozac, “[o]nce I found out that my girlfriend was yellin’ at me that ---” (Tr. 30) He did not consult a doctor when he stopped taking Prozac. (Tr. 30-31) And, since Applicant stopped taking Prozac, he has not seen any medical professionals regarding other options, whether it is medication or anything else. (Tr. 31)

After his discharge from the hospital in February 2018, Applicant had counseling appointments “for a couple of months after that and a couple (of) group sessions . . . AA meetings and things like that.” Applicant stated, “There’s no real cure for alcoholism. I’m an alcoholic. I’m going to be an alcoholic for all my life and [all] I can do is try my best and work on it and make sure I don’t get in a situation as to cause undue stress to make me want to be stupid and think I can self-medicate.” (Tr. 28)

SOR ¶ 1.b – Alleged that Applicant continued to consume alcohol, until at least June 2022, not in accordance with the treatment advice and recommendations as set forth in subparagraph 1.a, above.

Applicant stated that he used to be addicted to alcohol and now he is addicted to coffee. When he attended AA meetings, he found participants telling the same stories and did not find too many people who had “really positive messages of getting through things. I guess I didn’t find the right meeting or the right person, but it just – it wasn’t – it wasn’t something I could do.” (Tr. 33) He did not seek any alternative to AA other than going to church. (Tr. 33)

When Applicant was hospitalized in February 2018, he was drinking a 12-pack of beer per day twice a week. (Tr. 33) After he was released, he remained sober and has “fallen off the wagon several times since then.” (Tr. 33-34) He stated that he remained sober for a year until “sometime in 2019” and then his drinking would stop and start for a few months. (Tr. 34) As of his hearing date, he had a drink consisting of two Trulies (hard seltzer) within the last six months. (Tr. 35)

Applicant has limited methods to maintain sobriety. He stated with “this court thing . . . has kind of consumed me.” (Tr. 35) He “was getting into trying to restore an old car,” but he is rarely home to work on it. (Tr. 35) Applicant stated that he lives “vicariously now through my girlfriend, through my garden.” (Tr. 35) He has been with his girlfriend, who is retired, for 25 years. However, most of the time he is on work-related travel and concentrates on working. His girlfriend is supportive of him

maintaining sobriety. (Tr. 35, 44-45) Applicant does not see his girlfriend much due to his work-related travel but keeps in frequent contact with her by Skype or Zoom. (Tr. 47-48) He also promised her that he would not drink around his seven-month-old granddaughter. (Tr. 44) Applicant stated that he can turn to a “few coworkers” for support and added that his line of work is hard on family life. (Tr. 48)

SOR ¶ 1.c – Alleged that in August 2022, Applicant was evaluated by a licensed clinical psychologist (Dr. D) and diagnosed with alcohol use disorder, severe. The psychologist opined that his diagnosis is a current significant risk to his judgment, reliability or trustworthiness concerning classified information.

Applicant acknowledged showing up drunk at work during his “heavy drinking days” which would have been before his 2018 treatment. (Tr. 37-38) He also acknowledged that, “it would be helpful to talk to someone outside my circle” to deal with his alcoholism and depression. (Tr. 42) He stated that he might consider zoom-type appointments if he, “could stay awake and find time.” He explained:

I’m not using that as an excuse, but my day starts at 3:30 in the morning. I wake up. I eat breakfast. I ride my motorcycle across the bridge to [job site] where I get there at 4:30 to avoid – to find a place to park. It’s five o’clock we start work. I get off work at 3:30. It takes an hour and a half to get home. I take a shower. I clean up. I try to relax. It’s a long day. . . . Every day for the past 30 years. (Tr. 43)

Applicant stated his work schedule was typical of those in his industry. He has three weeks of vacation a year and is required to take it. During his vacation he sees his doctor to manage his insulin for his diabetes. Applicant claimed that he is gone 350 days out of the year on travel. (Tr. 45-47)

The following is a summary of the two SOR allegations raising the psychological conditions concerns.

SOR ¶ 2.a – Alleged that in February 2018, Applicant was hospitalized for about one week after expressing suicidal ideations and making threatening comments about his coworkers. He was diagnosed with major depression, recurrent, severe without psychosis; alcohol use disorder, mild to moderate/abuse; and moderate to severe psychosocial stress (Dr. K). Upon discharge the program recommended that Applicant have individual psychotherapy, a psychiatric follow-up, and attend an intensive outpatient program for mood disorder and chemical dependency. It also recommended attending AA meetings and to abstain from alcohol. Applicant did not follow those recommendations.

SOR ¶ 2.b – In August 2022, Applicant was evaluated by a licensed clinical psychologist (Dr. D) and diagnosed with alcohol use disorder, severe; other specified personality disorder; and major depressive disorder, recurrent episode, mild with mixed features. The clinical psychologist opined that Applicant’s diagnosis is a current

significant risk to his judgment, reliability or trustworthiness concerning classified information.

To manage his major depressive disorder, Applicant stated, “I’ve managed to take enough abuse that I’m not in a situation where I have to be underpaid and overworked. I just do my best, try to keep my head in the sand, not look around at what others are doing. I realize that they pretend that they care but they don’t and (I) just focus on work and work as hard as I can to try to make as much money as I can as fast as I can to hopefully retire at 62.” (Tr. 36-37)

Applicant disagreed that his August 2022 diagnosis of major depressive disorder is a current significant risk to his judgement, reliability or trustworthiness concerning classified information. He stated:

I’ve been an alcoholic for all of my life and I’ve worked in this business around various forms of levels of secrecy and I consider myself to be the least worry for discussing, exposing of classified information. I have been in many situations in restaurants and breakfast places in the morning at motels, you know, with other contractors and other people, been around other people discussing stuff that shouldn’t be said all the time and I – what I tell people, I pull wires and install boxes. I don’t like to discuss where it is, what it is, and I don’t consider myself the law. What goes on the road stays on the road. I don’t – I’m not a security risk. (Tr. 38)

Applicant denied having any suicidal ideations since he stopped taking Prozac and denied feeling threatening towards others. (Tr. 39)

Personal Conduct

The SOR allegation under this concern is established by Applicant’s April 30, 2019 SF-86, his April 6, 2023 SOR admission, and his hearing testimony. (GE 1; SOR Answer)

The following is a summary of the one allegation under the personal conduct concern.

SOR ¶ 3.a – Alleged that Applicant falsified material facts on his SF-86, executed by him on April 30, 2019, in response to “Section 23 – Illegal Use of Drugs or Drug Activity, ... In the last 7 years, have you illegally used any drugs or controlled substances?” Applicant answered “No” and, and thereby, deliberately failed to disclose that he smoked marijuana once every two months prior to his February 2018 hospitalization.

During his February 2018 interview with a medical doctor (Dr. K), Applicant reported the following drug abuse:

ALCOHOL AND DRUG HISTORY: The patient first tried alcohol and marijuana at age 15. He also tried cocaine and methamphetamine in his 20s. He reports that he had been increasingly abusing alcohol recently drinking a 12-pack of beer approximately two times per week. He does use marijuana intermittently perhaps once every two months. He does not use any tobacco-related products. (GE 3, pg. 1)

During his 2022 interview with a licensed clinical psychologist (Dr. D), Applicant reported the following drug abuse:

[Applicant] smoked marijuana in high school. He said occasionally he would use it at a party. He said his last use was “4-5 years ago.” He then qualified that he may use marijuana up to “once a year.” When asked about other illicit substances, he denied use or having tried any other substances. This was discrepant as medical records indicated he has “tried cocaine and methamphetamine in his 20s.” (Tr. 39-40; GE 4, pgs. 6-7)

In response to Department Counsel’s question asking him why he did not report his drug use on his 2019 SF-86, Applicant stated, “I didn’t realize that I didn’t.” (Tr. 40) He is aware that marijuana use is prohibited as a security clearance holder and attributes his past use of marijuana to “[I]ack of poor judgment [sic].” (Tr. 40-41) He claimed that he does not currently possess marijuana, nor does he intend to use it in the future. He used marijuana in lieu of alcohol “to self-medicate to try to stop drinking, you know.” He stated that course of action did not work and that his marijuana use was “[j]ust (in) the more recent years,” (Tr. 41)

APPLICANT’S COMMENTS

At the conclusion of questioning and before closing argument, Applicant stated:

I’d like to say that I am guilty of everything that’s said here. I – I am not a risk for declaring what I do, what I’ve seen, or who I’ve seen, or anything like that. I am willing to face the consequences of the crime I have committed. I’m glad this is finally over as far as getting this off my chest. It’s been a lot of sleepless nights. And it would be curious of what it is [sic]. (Tr. 50)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(d), describing 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."

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain a clearance favorable 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Alcohol Consumption and Psychological Conditions

AG ¶ 21 states 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 ¶ 27 articulates the security concern for psychological conditions:

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.

AG ¶ 22 provides alcohol consumption conditions that could raise a security concern and may be disqualifying in this case:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in any intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

(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;

(e) the failure to follow treatment advice once diagnosed; and

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

AG ¶ 28 provides psychological conditions that could raise a security concern and may be disqualifying in this case:

(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;

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

The record establishes security concerns under AG ¶¶ 22(a), 22(c), 22(d), 22(e), 22(f), 28(a), 28(b), 28(c), and 28(d). Further details will be discussed in the mitigation analysis, *infra*.

Four alcohol consumption mitigating conditions under 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 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.

Five psychological mitigating conditions under AG ¶ 29 are potentially applicable:

(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;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Disqualifying Conditions

Dr. D diagnosed Applicant with: (1) 303.90 alcohol use disorder, severe; (2) 301.89 other specified personality disorder; and (3) major depressive

disorder, recurrent episode, mild and mixed features, in August 2022. Dr. D concluded that it would be imprudent to grant Applicant access to classified information, and stated:

At present [Applicant's] symptoms of depression do not appear to be treated as he has discontinued use of psychiatric medications and is not receiving therapy services. [Applicant's] symptoms are consistent with a history of Major Depressive Episodes, which have occurred since at least 2015 per his report. Despite ongoing symptoms that appear more severe in the past, [Applicant] only endorsed mild symptoms currently.

[Applicant] provided responses that indicate multiple concerns as it relates to substance use, specifically alcohol use. [Applicant] has not been able to maintain sobriety, and he has endorsed at least two occasions in his life where he has developed a tolerance and dependence for alcohol. He currently endorses cravings despite having stopped 3-4 months ago, and he is not engaged with sobriety support like AA or a chemical dependency or addiction medicine program. He appears to vacillate between his reports of wanting to stop drinking and being unwilling or unable to do so.

[Applicant] appears to have limited resources to manage his health and well-being. He has not engaged in his medical treatment for sleep apnea which may be exacerbating underlying illnesses. He has a stressful job which takes him away from his primary support system and consistent medical treatment. [Applicant] endorsed symptoms of current withdrawal including cravings. He has a history of tolerance to alcohol within the last 6 months. [Applicant's] prognosis is guarded as he does not seem to have been able accept the gravity of his substance use and is in the earliest stages of stopping his use. Although he intermittently acknowledged he might have a struggle with alcohol, he has made choices in the last 6 months which raise concern about his motivation to remain sober. These include stopping his psychiatric medication, not engaging in substance use treatment, and not adhering to suggestions given by professionals in the past about his substance use. Additionally, he has not been engaged in programs to assist with his sobriety like mental health therapy, AA or a chemical dependency program.

Conclusions: Currently, [Applicant] carries mental health diagnoses that do appear to be a current significant risk to his judgment, reliability or trustworthiness concerning classified information. His risk to judgment and reliability of any future mental health problems may also be elevated because of his intermittent relapse and use of substances and his current diagnosis of depression. (GE 4, pgs. 10-11)

Mitigating Conditions

None of the mitigating conditions fully apply; however, Applicant provided some important mitigating information. He discussed self-coping mechanisms to include restoring an old car, a long-term supportive relationship with his girlfriend, and vicariously maintaining his garden through his girlfriend. He also promised his girlfriend that he would not drink around his seven-month-old granddaughter. He also stated that he can turn to a “few coworkers” for support but did not elaborate on the extent of support these coworkers can or are able and willing to provide. His significant absence from home life, due to the work schedule he described, minimizes positive benefits that these resources can provide. He also is unable or unwilling to make the effort to seek treatment from a qualified medical or mental health professional to address the concerns raised.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 provides one personal conduct condition that could raise a security concern and may be disqualifying in this case:

(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 provided incorrect information when he completed his April 30, 2019 SF-86 by stating that he had not illegally used any drugs or substances in the last seven years. As noted, he admitted he used marijuana within the previous seven years during his April 6, 2023 SOR answer; however, he equivocated when asked why he did not report this drug use by Department Counsel during his hearing by stating that he did not realize that he had not reported his past drug use.

As also noted, he disclosed that he used marijuana intermittently approximately two times a week perhaps once every two months during his February 2018 medical interview by Dr. K. He more recently confirmed that his last marijuana use was four to five years ago when interviewed by Dr. D in 2022. Such use that would have fallen within the seven-year window prior to April 2019. This question is straightforward and

easy to understand. Per his testimony, he has a 40-year history of holding a clearance, and he was familiar with the clearance process. His equivocating during his hearing testimony is somewhat perplexing in light of his having admitted to this allegation when he responded to his SOR.

“Applicant’s statements about his intent and state of mind when he executed his SF-86 were relevant evidence, but they [are] not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant’s *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant’s intent or state of mind may not always be based on an applicant’s statements, but rather may rely on circumstantial evidence. *Id.*

The record evidence also raises a non-alleged concern under Guideline H, Drug Involvement and Substance Misuse, as a result of Applicant’s admitted drug use while holding a clearance. Applicant clearly understood that honestly disclosing material facts concerning this relevant matter would put his national security eligibility at risk.

The record evidence establishes AG ¶ 16(a) in relation to SOR ¶¶ 3.a.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

- (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; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the mitigating conditions fully apply. SOR ¶ 3 alleges Applicant's false statement occurred on his April 30, 2019 SF-86, which was more than four years ago. Arguably, this false statement might be mitigated by the passage of time. However, Applicant did not honestly and candidly provide relevant security information on this point during his hearing. His denial of such relevant information on his 2019 SF-86 casts doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

Whole-Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the whole-person concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines I, G, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 58-year-old electronics mechanic. He served in the Air Force from September 1983 to April 1991 and was honorably discharged as a sergeant. Since his discharge from the Air Force, he has been employed as a defense contractor and held a clearance until the present, a period spanning 40-plus years. Applicant did not submit any character evidence. He also did not submit any documentary evidence to address the concerns raised by the Government's evidence, notably reports prepared by Dr. K, a

medical doctor, in April 2018, and by Dr. D, a licensed clinical psychologist, in August 2022. Nor did he follow through with any of the aftercare or treatment that the health care providers recommended. Applicant averred that his work schedule prevents him from pursuing any meaningful follow-up to address his alcohol and/or psychological issues.

The DoD encourages employees to seek needed mental-health and alcohol-consumption therapy and treatment. As set forth in AG ¶ 27, no negative inference is drawn on the basis of mental-health or alcohol-related counseling or treatment. In that regard, individuals are encouraged to seek appropriate treatment. Applicant sought such treatment in February 2018 but did not follow-up with the recommendations of his treating physician. As further noted in Dr. D's August 2022 report, Applicant's symptoms of depression do not appear to be treated nor has his use of alcohol been adequately addressed. See Dr. D's summary, *supra*. Dr. D concluded that Applicant's mental health diagnoses do appear to be a current significant risk to his judgment and reliability or trustworthiness concerning classified information. Dr. D also opined that his risk to judgment and reliability due to any future mental health problems may also be elevated because of his intermittent relapse and use of substances and his current diagnosis of depression.

In light of the unmitigated alcohol consumption and psychological conditions concerns, and to a lesser extent the unmitigated personal conduct concerns, continuing Applicant's eligibility for access to classified information is not deemed prudent or warranted. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Psychological conditions, alcohol consumption, and personal conduct security concerns are not mitigated.

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: Subparagraphs 1.a – 1.c:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline I: Subparagraphs 2.a – 2.b:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline E: Subparagraph 3.a:	AGAINST APPLICANT Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge