



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02625
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: Ronald C. Sykstus, Esq.

03/21/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On January 26, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On February 16, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 17, 2024, scheduling the hearing for February 22, 2024. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 4. There were no objections, and the exhibits were admitted in evidence. Applicant testified and four witnesses testified on his behalf. He offered Applicant Exhibits (AE) A through S. There were no objections, and they were admitted in evidence. DOHA received the hearing transcript (Tr.) on March 1, 2024.

### **Findings of Fact**

Applicant admitted all of the allegations in SOR. His admissions are incorporated into my 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 49 years old. He earned a bachelor's degree in 1999 and a master's degree in 2003. He has been with his spouse for 32 years, and they married in 2015. They have no children. He has worked for his present employer, a federal contractor, for the past four years. (Tr. 18-23; GE 1)

Applicant admits he is a recovering alcoholic, and he has had multiple relapses since 2008. He accepted his challenges with alcohol and, through participation in Alcoholics Anonymous (AA) and the support of his family and friends, he has been sober since April 20, 2019. He attends AA once or twice a week and has contact with his sponsor about three times a week. He has completed the 12-step program and continues to work the program, focusing on making amends to people he hurt. He uses a daily reflection application that focuses on spirituality. He is a lifelong member of his church and attends regularly. (Tr. 23-25, 36-39)

Applicant's background of alcohol abuse escalated in 2008, when he experienced personal tragedies and his drinking worsened. He was reprimanded by his employer in 2008, and he voluntarily enrolled in a rehabilitation program, but he continued to consume alcohol, at times in excess and to the point of intoxication. (Tr. 25-27; GE 1, 2, 4)

In about 2010, Applicant relapsed and abused alcohol. He voluntarily sought treatment at a health center for detoxification, but he continued to abuse alcohol, at times in excess and to the point of intoxication. (GE 1, 2, 4)

In May 2012, Applicant's employment with company CT was terminated because of his frequent absences, consumption of alcohol during work hours, and a failed alcohol and drug test. (Tr. 30; GE 1, 2, 4)

In about 2012, Applicant voluntarily admitted himself to a recovery center for alcohol treatment. After completing four months of the nine-month program, he terminated

treatment. He later resumed consuming alcohol, at times in excess and to the point of intoxication. (GE 1, 2, 4)

In about November 2017, Applicant experienced a relapse of alcohol abuse. He voluntarily sought treatment at a medical center for detoxification, but continued to consume alcohol, at times in excess and to the point of intoxication. (Tr. 26-28; GE 1, 2, 4)

In March 2018, Applicant failed to attend AA meetings and discontinued his anti-alcohol medications, and he experienced a relapse of alcohol abuse. He was admitted to an inpatient detoxification program and was diagnosed with Alcohol Use Disorder-Severe and Cannabinoid Use Disorder-Mild. He was recommended for further substance abuse dependency treatment. However, following Applicant's detoxification, he terminated treatment and resumed consuming alcohol, at times in excess and to the point of intoxication. (Tr. 26-28; GE 1-4)

In April 2019, Applicant experienced a relapse of alcohol abuse and was admitted into a health service facility for an inpatient detoxification program. He was again diagnosed with Alcohol Use Disorder-Severe and Cannabinoid Use Disorder-Mild, and it was recommended he participate in substance dependence treatment. Following detoxification, Applicant terminated treatment. (Tr. 28-29; GE 1-4)

Applicant testified that he initially tried AA, but he was too stubborn and knew what to do and thought he could address his alcohol abuse on his own. He would remain sober for a period and then relapse. Finally, in April 2019, he realized consuming alcohol was not fun anymore. His spouse had had enough, and his family was aware of his problems. He knew he had to get sober and did. He is confident and comfortable that he will not relapse but is vigilant in understanding he cannot make any guarantees about his sobriety. (Tr. 26-29)

Applicant admitted that during the years he was abusing alcohol (2008-2019), he infrequently used marijuana when it was offered to him by others. He did not use it on a regular basis and did not purchase it. He used it when it was available. He stated that alcohol was always his first choice. He has not used marijuana since he has been sober. He no longer has contact with any of the acquaintances with whom he had previously used marijuana. He does not intend to use it in the future. (Tr. 29-30, 43)

On Applicant's March 2021 Security Clearance Application (SCA), Applicant answered "no" and failed to disclose his prior marijuana use in response to Section 23-Illegal Use of Drugs or Controlled Substances: "In the last seven years have you illegally used any drugs or controlled substances. During his May 2021 background investigation, he was not initially forthcoming about his marijuana use, denying drug use and then admitting it when he was confronted with information about his past use. He told the investigator that he did not have a security clearance at the time he used marijuana. He said he used it about eight times with some friends in 2012. He said he did not disclose this use because it did not fall within the seven-year disclosure requirement, and it was

an honest mistake. He told the investigator that he had not used marijuana or any other type of drug since 2012. He said that he did not list it on his SCA because it occurred more than seven years ago. (Tr. 30; GE 1, 4)

SOR ¶ 3.a alleged that Applicant falsified his March 2021 SCA when he responded “no” as to whether in the past seven years he had illegally used any drugs or controlled substances. In Applicant’s medical record from March 9, 2018, he disclosed to the attending doctor that he smokes marijuana lightly and will smoke maybe half a marijuana cigarette twice a month. He further stated to the doctor that he last smoked marijuana three weeks earlier. In his April 20, 2019 medical record, he disclosed that in the past month he had used cannabis, on average, a few puffs over the course of the week. (GE 3)

In Applicant’s answer to the SOR responding to ¶ 3.a, he stated:

I admit. I am here to make a good-faith effort to correct my omission of marijuana use beyond the timeframe of early 2012. This was not a deliberate falsification but simply an oversight on my part. With alcohol having been the major hurdle and issue in my life, I was so focused on these questions that when I got through the marijuana questions, I inadvertently answered “No” since it was not a big part of my life based upon the limited frequency of my usage. My misuse of marijuana up to 2019 was so infrequent and the circumstances surrounding my use did not include any of my current contacts and acquaintances and are unlikely to recur. Again, I did not hold a security clearance during this time of misuse. With nearly 4 years of sobriety and abstinence, I am confident in my recovery progress and the positive behavioral changes that I have made should reinforce my reliability, trustworthiness, or good judgment going forward. I do not believe this mistake should be cause for a denial of my security clearance.

Several times at Applicant’s hearing, he was asked why he failed to disclose his drug use on his SCA. He testified that his drug use was a small part of his life, and he thought he disclosed it and provided information about his 2012 drug use. He explained he used marijuana infrequently, and he was not trying to be intentionally deceptive. He did not recall the specifics of his use due to memory lapses. He did not see his use as a significant part of his life. His last marijuana use was in April 2019 at a friend’s house. He would use it infrequently when it was available and when he was drinking alcohol, and never when he was sober. He said he did not understand why he answered “no” on the May 2021 SCA about his past drug use, and he was not trying to be deceptive. He said he is not the same person. (Tr. 30-34, 39-52)

I find Applicant was aware that he was required to disclose his past drug use on his SCA and deliberately failed to disclose it. When he was interviewed by a government investigator in May 2021, he was not honest with the investigator when he minimized his drug use by telling her he had not used marijuana since 2012, which was false. I find Applicant deliberately failed to disclose his past drug use on his March 2021 SCA.

Applicant stated in his answer to the SOR that he fully acknowledges his abuse of alcohol and marijuana. He admitted he struggles with alcohol dependency that resulted in multiple attempts at sobriety. He stated:

As of April 20, 2023, I will celebrate 4 years of sobriety and abstinence from alcohol. At this point in my recovery journey, I fully acknowledge my abuse potential and maladaptive alcohol use and the negative aspects it brought to all areas of my life. I attribute my success thus far to my personal drive to live a healthy and fulfilling life without alcohol, my loving and supportive spouse of 30 years, my weekly participation in Alcoholics Anonymous, my sponsorship and accountability, my anti-alcohol medication, and my strong network of family and friends. At 48 years of age, I understand all the difficulties that a first drink could bring me, and I am positive in my ability to remain on this path of recovery as I put my full priority on sobriety, health, family, and career. (SOR answer)

Four character witnesses testified on behalf of Applicant. They all are aware of the allegations in the SOR. His spouse testified that he is in a good place and alcohol is no longer part of his life. He confirmed Applicant's commitment to AA and working the program. He confirmed Applicant no longer uses alcohol or drugs. He considers Applicant honest and trustworthy. The other witnesses testified they are aware of Applicant's alcohol struggles and confirmed he has been sober for several years. They believe Applicant is honest and trustworthy. (Tr. 52-85)

Applicant submitted performance evaluations from his current employer (2020-2023) and past employer from 2017 and 2018 reflecting his excellent performance. He provided numerous certificates of completion for various courses. (AE A-S)

### **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 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:

(b) alcohol-related incidents at work, such as reporting for work or duty in an 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) diagnosed by a duly qualified medical or mental health professional (e.g. physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol abuse 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.

Applicant had alcohol-related incidents at work. He was reprimanded by his employer in 2008 for alcohol abuse, and, in 2012, he was terminated for consumption of alcohol during work hours, frequent absenteeism, and failing an alcohol and drug. He voluntarily sought alcohol treatment six times from 2008 through 2019. He would at times terminate treatment or complete the treatment, but each time he would resume consuming alcohol. He was diagnosed by duly qualified medical professionals with Alcohol Use Disorder-Severe. His most recent diagnosis was in 2022, and it noted he was in remission. He repeatedly failed to follow treatment plans after his diagnoses and consumed alcohol after his diagnoses and against treatment recommendations. The evidence supports the application of the above disqualifying conditions.

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 has been sober and participating in AA since 2019, almost five years. It is not unusual for those suffering from Alcohol Use Disorder to stumble before coming to terms that they are powerless over their condition, need to accept help, and commit to their sobriety. Applicant failed to remain sober after treatment on several occasions. He now accepts his challenges with alcohol, and, through participation in AA and the support of his family and friends, he has remained sober. He attends AA once or twice a week and has contact with his sponsor about three times a week. He has completed the 12-step program and continues to work the program focusing on making amends to people he hurt. He uses a daily reflection application that focuses on spirituality. He readily acknowledges his alcohol history and has provided evidence to overcome his problem. AA is a recognized and respected program to help those with alcohol issues. Applicant has successfully participated in the program for close to five years. All of the above mitigating conditions apply.

### **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
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder.

Applicant infrequently used marijuana from about 2012 to April 2019. During his 2018 inpatient detoxification program, he was diagnosed with Cannabinoid Use-Disorder-Mild and again in April 2019. 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, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's use of marijuana was related to his alcohol abuse. The same analysis under Guideline G is applicable under the drug involvement and substance misuse guideline. Applicant has been sober for almost five years and continues to be faithful to abstaining from alcohol and drugs. Based on his commitment to sobriety, I find that future illegal drug use is unlikely to recur. He has established a pattern of abstinence, no longer associates with drug users, and has avoided an environment where drugs are present. The above mitigating conditions apply.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern 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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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,

award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

Applicant deliberately failed to disclose his illegal drug use on his March 2021 SCA. AG ¶¶ 16(a) applies.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Applicant did not make a prompt good-faith effort to correct his concealment and falsification about his drug use. He was afforded an opportunity to set the record straight and disclose it during his interview with a government investigator but failed to disclose his more recent marijuana use. He specifically told the investigator that he had not used any illegal drug since 2012, which was false. AG ¶ 17(a) does not apply. Failing to be honest during the security clearance process is not a minor offense. The process relies on those seeking a clearance to be honest and forthcoming. Applicant failed to do so on his SCA and during his background interview. In his answer to the SOR and at his hearing he admitted his more recent drug use.

Applicant's intentional failure to disclose his most recent drug use was not minor. His justifications for why he did not disclose the information is troubling. He has not taken full responsibility for his failure to be truthful which raises security concerns. The security clearance process relies on people to be candid and not parse their answers according to their own interpretations to straightforward inquiries. AG ¶ 17(c) does not 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 G, H and E in my whole-person analysis.

Applicant has not met his burden of persuasion. 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.” The record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude he successfully mitigated the security concerns arising under Guideline G, alcohol consumption, and Guideline H, drug involvement and substance misuse. He failed to mitigate the security concerns under 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.h:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a-2.c:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge