



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-00516

Appearances

For Government:

Jenny Bayer, Esquire, Department Counsel

For Applicant:

Pro se

04/03/2024

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 10, 2022. (Item 4.) On May 10, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines G (Alcohol Consumption) and H (Drug Involvement and Substance Misuse). (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) with explanations on May 31, 2023. He requested his case be decided on the written record in lieu of a hearing. (Item 2.) On July 25, 2023, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 11, was provided to Applicant, who received the file on August 10, 2023. (It is noted that Item 5 was not legible.)

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant elected not to file any objections or submit additional material. The case was assigned to me on November 15, 2023. Items 1 through 11 are hereby entered into evidence. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 66 years old, divorced from his third wife, one adult child. He is an Air Force veteran. Applicant has been employed by a defense contractor since November 2020. (Item 4 at Sections 13A, 15, 17, and 18.)

Paragraph 1 (Guideline G, Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he used intoxicants to excess and therefore is potentially unreliable, or untrustworthy. Applicant admitted all the allegations under this guideline with explanations.

1.a. Applicant admitted that he was arrested for Driving Under the Influence of Alcohol in May 1983. He further stated that he hired a lawyer who argued to the court that Applicant was entrapped. This charge was dismissed as nolle prosequi in 1997. (Item 3 at 7-8; Item 11 at 4.)

1.b. Applicant admitted that he was arrested for Driving Under the Influence of Alcohol in October 1991. He pled nolo contendere in November 1991 and was sentenced to fines and fees. The FBI record states he received confinement for 12 months. In his Answer Applicant stated that he received, "twelve months' probation." No further information was provided. (Item 3 at 9-10; Item 11 at 4.)

1.c. Applicant admitted that he was arrested for Driving Under the Influence of Alcohol in July 1995. He was subsequently found guilty in February 1997 and sentenced to 12 months' probation and a fine. The FBI record states that he also received confinement for ten days. In his Answer Applicant stated that he received, "0 days' confinement." (Item 3 at 10-11; Item 4 at 34; Item 11 at 4.)

1.d. Applicant admitted that he was arrested for Driving Under the Influence of Alcohol in February 1998. He was found guilty in April 1998 and sentenced to pay fines and fees, and received twelve months' probation. (Item 3 at 13-14; Item 4 at 35-36; Item 7; Item 11 at 4.)

1.e. Applicant admitted that he was arrested for Driving Under the Influence of Alcohol in April 2000. He was found guilty in July 2000 and sentenced to a fine. (Item 3 at 15-16; Item 4 at 36-37; Item 11 at 5.)

1.f. Applicant admitted that he was arrested for Driving Under the Influence of Alcohol in March 2014. He was found guilty in February 2016 and sentenced to six months' probation, community service, fines and fees, and 24 hours' confinement. (Item 3 at 16-17; Item 4 at 30-31; Item 8; Item 9; Item 11 at 7.)

1.g. Applicant admitted that he was arrested for Driving Under the Influence of Alcohol in August 2020. He was eventually found guilty of reckless driving and sentenced to six months' probation, fines and fees, and community service. (Item 4 at 32-33; Item 11 at 2-3.)

Applicant elected not to submit any information as to his current use of alcohol. Accordingly, I cannot find that he has abstained from alcohol for any period of time.

Paragraph 2 (Guideline H – Drug Involvement and Substance Misuse)

Applicant was employed by the Federal government from 1983 to November 2014. He has admitted being involved in a single incident of marijuana use in July 2014 while having access to classified information and holding a sensitive position. He subsequently tested positive for marijuana after an employment-based urinalysis. According to Applicant, he was allowed to retire. He further stated that this was his only use of marijuana. (Item 4 at 12-13, 38-39; Item 11 at 6.)

Applicant elected not to submit any information about his work performance or ability to safeguard classified information. I am unable to make a credibility assessment as he elected not to have a hearing.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph1 (Guideline G – Alcohol Consumption)

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

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes two conditions that could raise security concerns 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; 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.

Applicant has a history of excessive alcohol use. This is shown by his seven alcohol-related arrests and convictions from 1983 through 2020. Both disqualifying conditions have application to the facts of this case and transfer the burden to Applicant to mitigate them.

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

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

None of these mitigating conditions is established by the evidence in this case. Applicant made the decision not to respond to the FORM. The record has no information that would support the application of any of the mitigating conditions. Paragraph 1 (Alcohol Consumption) is found against Applicant.

Paragraph 2 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth 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. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. §802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

(a) any substance misuse (see above definition);

(b) testing positive for an illegal drug; and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admitted that he used marijuana a single time in 2014 while employed by the Federal government. He held a security clearance and was holding a sensitive position. His drug use was detected due to a positive urinalysis. All of the stated disqualifying conditions apply.

The following mitigating condition under AG ¶ 26 has also been considered:

(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.

Applicant's admitted single use of marijuana occurred in 2014. There is no additional evidence to show that he has used marijuana in the years since that incident, which resulted in his retirement from Federal employment. That decade-long long time span is sufficient to bring AG ¶ 26(a) into operation and mitigate whatever security significance that single use may have had. Paragraph 2 (Drug Involvement and Substance Misuse) is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns over his long-term problems with alcohol. The significant potential for pressure, coercion, or duress remains undiminished. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge