



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



In the matter of: )  
)  
) ISCR Case No. 23-00264  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Mark D. Lammers, Esq.

04/03/2024

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption. He mitigated the concerns under Guideline H, drug involvement and substance misuse. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On February 24, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and G. The DOD acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on May 19, 2023, and requested a hearing. His answer also contained exhibits 1-12 attached thereto. There was no objection to these

exhibits. They will be referred to hereinafter as: "Answer Exh.", followed by the respective number. The case was assigned to me on October 24, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 3, 2023, and the hearing was held as scheduled on December 12, 2023. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A1-A3 and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 26, 2023.

### **Findings of Fact**

Applicant admitted all the SOR allegations with explanations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 60 years old. He has worked for a defense contractor since April 2022. He worked for an electronics company for about 21 years. He holds a bachelor's degree, awarded in 1988. He is divorced (married 1997-2011) and has no children. This is his first time seeking a security clearance. (Tr. 20; GE 1; Answer Exh. 1, 6)

The SOR alleged Applicant used marijuana at various times from about October 1980 to about December 2021; that he purchased marijuana from about October 1980 to about September 2020; and that he used the prescription medication, OxyContin, not prescribed to him, at various times from about September 2018 to about September 2020. (SOR ¶¶ 1.a-1.c)

The SOR also alleged that Applicant consumed alcohol in excess, and to the point of intoxication, from 1980 to present; that he was arrested in November 2013 and charged with driving under the influence (DUI); that he received treatment at an alcohol treatment facility from June to July 2010, for a condition diagnosed as episodic alcohol abuse disorder; and that he continues to consume alcohol, notwithstanding his treatment for episodic alcohol abuse disorder. Applicant admitted to this conduct in his April 2022 security clearance application (SCA). (SOR ¶¶ 2.a-2.d)

### **Applicant's Drug Activity**

Applicant began using marijuana when he was in high school (about 1980). The frequency of his use then and while in college was about two times a week. As he became older, his recreational use of marijuana coincided with his alcohol consumption, discussed below. He continued to use marijuana recreationally through the years. He would stop for a period if he needed to take a drug test for employment purposes. He used marijuana because it relaxed him. In 2021, he used marijuana about once a month. He stopped using it in December 2021. That was his last use of marijuana. He had tapered off his use because he was not enjoying using it as he had in the past. He stopped in December 2021 so he could pass a drug test when he applied for his current position. Although his state of residence had legalized recreational use of marijuana in 2021, he knew that it

had always been illegal under federal law. He purchased the marijuana from a friend of a friend or, when it became legal within his state, at dispensaries. (Tr. 27-28, 30, 77-78; GE 1, 2 (pp. 3, 13-14))

Applicant was the trustee of his late uncle's estate and was cleaning out his uncle's apartment after his death in approximately September 2018, when he discovered a bottle containing 25 OxyContin pills. He ingested the pills over the next two years by taking one or two at a time. He did not have a lawful prescription for these pills. He took them because he liked how they relaxed him. He took the last OxyContin pill in September 2020 and has not taken any more since then. (Tr. 30-32, 53, 70; GE 2 (p. 3))

Applicant testified that he has no intention to use any illegal drugs in the future, including marijuana and OxyContin. He also provided a written statement of intent not to use illegal drugs in the future. (Tr. 33; Answer Exh. 11)

### **Applicant's Alcohol Use**

Applicant began drinking alcohol while in high school and continued through college and beyond. He enjoys drinking alcohol, and he did not believe he had a problem. His drinking increased in 2008 probably because he stopped smoking cigarettes and marijuana for a time. By 2010 he was drinking 10 to 12 drinks per night. His preferred drink was wine and some brandy. Sometime in 2010, friends and family approached him about his excessive drinking. This motivated him to get treatment. Additionally, at about the same time, a coworker said she could smell alcohol on him at work. He claimed he did not drink at work, but he would stay up late at night and into the early morning drinking up to 12 drinks of alcohol, which was probably still in his system the next day at work. His primary care physician had diagnosed him with episodic alcohol abuse disorder in late 2010 or early 2011. His wife also served him with divorce papers about this time. (Tr. 34-35, 53-55, 63, 67-68, 74; GE 2 (pp.11-12))

In June 2010, Applicant voluntarily entered an inpatient alcohol-treatment facility. It was a 30-day program. He admitted that he drank either the day before entering treatment or the day he entered it. He did not drink while in treatment. He claimed that it changed his attitude toward drinking and that it was "life changing" for him. He completed the program in July 2010. No treatment records are included in the record. Outpatient treatment was recommended for Applicant after he completed his inpatient treatment, but he did not pursue additional treatment because "life got in the way." He remained sober for about six months after his treatment, then he resumed consuming alcohol. Between 2011 and 2023, he estimated that he remained sober for six or seven different time periods. His longest period of alcohol abstinence was about 13 months, from January 2019 to April 2020. He admitted that he used marijuana and OxyContin during this period. His other periods of alcohol abstinence were about two to three months. He resumed drinking alcohol regularly in 2020 during COVID. (Tr. 34, 55-57, 60-61; GE 2 (pp. 11-12); Answer Exh. 7-8)

In 2013, Applicant was arrested and charged with DUI of drugs or alcohol. He attended a concert where he drank two 16-ounce beers and two 16-ounce margaritas. He believed he was okay to drive home because he walked around for awhile after the concert to give the alcohol a chance to wear off. He proceeded to drive home. He was stopped by law enforcement for speeding. He was clocked going 61 miles-per-hour in a 45 MPH speed zone. Later his blood was drawn and tested, which revealed a blood-alcohol content of .08, the legal level of intoxication. He ultimately reached a plea agreement and pleaded guilty to reckless driving. He was sentenced to one year of unsupervised probation and payment of fines and fees. These included fees for attending a DUI education class and a Mothers Against Drunk Drivers (MADD) panel. He complied with all his sentencing requirements. He has not had any further arrests since this incident. He admitted that he has driven five to six times after having drunk alcohol since this arrest. He claimed his consumption on those occasions was one or two drinks. He testified that he continued to drink alcohol after this arrest "because I enjoyed drinking." (Tr. 37-43, 64; GE 2 (pp. 10-11); Answer Exh. 12)

Applicant first participated in Alcoholics Anonymous (AA) in May 2010, shortly before he entered treatment. He has continued to participate in AA irregularly through the years. After completing treatment in 2010, he attended 90 AA meetings in 90 days. At that time, he was going to three to four meetings a week. He established a home AA group in 2010 and continues to attend those group meetings. He admitted that the longest period of sobriety for which he received an AA sobriety chip was one year. He has received a one-day sobriety chip three to four times over the years. A one-day chip signifies the first day of sobriety. He admitted having an AA sponsor at one time, but he has not had a sponsor since 2012. He currently attends AA meetings two times a week. His participation is corroborated by two other AA group members. (Tr. 37, 46, 48, 57, 64-65, 80-81; AE B; Answer Exh. 9)

In addition to AA, Applicant also participates in a faith-based alcohol recovery group. He began attending that group in approximately 2015. His attendance is corroborated by another group member. He finds both group meetings helpful. While he has attended both AA and this group over the years, he has also continued to consume alcohol during the same time. (Tr. 46-49; Answer Exh. 10)

Applicant claims that he completely stopped drinking alcohol on July 17, 2023, and has been abstinent since then. Before this claimed cessation, from April 2022 to July 17, 2023, he would drink a bottle of wine each night at home. Occasionally, he also would have mixed drinks and beer with the wine. He did not believe he was intoxicated each night, but he also believed he had too much alcohol to be able to drive. The reasons he stopped his alcohol consumption was for health reasons and to keep his job. On December 7, 2023, Applicant signed a letter of intent expressing that he would not consume any alcohol while holding a security clearance and offering to take random alcohol tests. (Tr. 45, 78-80; AE A3)

## **Character and Whole-Person Evidence.**

Applicant presented two character letters from former coworkers and one letter from a senior officer with his current employer. He is viewed as a valued employee who has demonstrated technical skills and integrity. He apparently shared some details about his background with his current supervisor, who supports his clearance request. He also provided job appraisal information that documents outstanding performance at various times in 1989, 1990, and 1991. (AE A1-A2; Answer Exh. 2-5)

## **Policies**

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 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 to obtain 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 about 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 H, Drug Involvement and Substance Abuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

In addition to the above matters, I note that the Director of National Intelligence (DNI) issued an October 25, 2014 memorandum concerning adherence to federal laws prohibiting marijuana use. In doing so, the DNI emphasized three things. First, no state can authorize violations of federal law, including violations of the Controlled Substances Act, which identifies marijuana as a Schedule I controlled drug. Second, changes to state law (and the laws of the District of Columbia) concerning marijuana use do not alter the national security adjudicative guidelines. And third, a person's disregard of federal law concerning the use, sale, or manufacture of marijuana remains relevant when making eligibility decisions for sensitive national security positions.

I also note in accordance with the Director of National Intelligence's clarifying guidance letter concerning marijuana dated December 21, 2021, I have considered that the evidence here supports mitigation in the form of Applicant's full disclosure of his past drug use on his SCA, his abstinence since 2021, and his signed letter of intent of nonuse in the future. The guidance also states that violation of federal drug laws remains relevant, but not determinative, to adjudications of security clearance eligibility. (See ES 2021-01529)

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

- (a) any substance misuse; and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admitted using marijuana on various occasions from about 1980 to about December 2021. He admitted purchasing marijuana from friends and at state-sponsored marijuana dispensaries. He admitted using the prescription narcotic OxyContin, without having a lawful prescription, at various times from about September 2018 to about September 2020. I find all the above disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(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 taken to overcome this 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 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 last use of marijuana was in December 2021. He used OxyContin over a two-year period ending in 2020 and he has not used it since then. His access to OxyContin was a unique circumstance and unlikely to happen again. He provided a signed statement of intent to abstain from all future illegal drug use. Applicant's abstinence since 2021 is sufficient to convince me that recurrence is unlikely. The frequency and recency of his past use does not cast doubt upon his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and AG 26(b) apply.

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern for alcohol consumption:

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

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable 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 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; and

(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

Applicant admitted his alcohol consumption, periodically to excess, from approximately 1980 to July 17, 2023. His excess drinking included as much as 12 drinks a night in approximately 2010; having friends intervene for him in 2010 and recommend that he seek alcohol treatment; showing up for work after a night of drinking to the extent that coworkers could smell alcohol emanating from him in approximately 2010; having his primary care physician diagnose him with episodic alcohol abuse disorder in approximately 2010; participating in a 30-day alcohol treatment program in 2010, but declining to follow that up with an outpatient program; being arrested for a DUI offense in 2013, with a blood alcohol content of .08; and participating in AA from about May 2010 through the present, but continuing to drink as much as a whole bottle of wine each night from April 2022 to July 17, 2023. All the above listed disqualifying conditions apply.

I have also considered all of the mitigating conditions for alcohol consumption under AG ¶ 23 and found the following relevant:

(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; 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 a 40-year history of excessive drinking, which led to a DUI arrest, treatment for excessive alcohol use, and a diagnosis of episodic alcohol abuse disorder, *inter alia*. While he has had periods of sobriety over the years, he also has always returned to consuming alcohol at some point. He has done this despite his alcohol treatment, his alcohol arrest, and his continued participation in AA and a religious-based support group. Now Applicant claims that since he has totally abstained from alcohol for approximately eight months (since July 2023) that he will continue to do so in the future despite his history to the contrary. He has not demonstrated a clear and established pattern of modified consumption. The evidence does not support the full application of any of these mitigating conditions.

### **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 considered Applicant's age, his character statements, his work evaluations, and his admissions to his alcohol and drug activity in his SCA from April 2022. However, I also considered the evidence of his pattern of alcohol abuse over the course approximately 40 years. Applicant failed to provide sufficient evidence to mitigate the alcohol consumption security concerns. The drug involvement security concerns are mitigated.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline G.

## 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 H:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge