



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



In the matter of:)
)
) ISCR Case No. 23-02560
)
)
Applicant for Security Clearance)

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Pro se

05/13/2024

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate the drug involvement and substance misuse, and the personal conduct security concerns raised by the facts in this case. National security eligibility for access to classified and/or to hold a sensitive position is denied.

Statement of the Case

On November 5, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). He was subsequently granted eligibility for access to classified information and/or to hold a sensitive position. On December 11, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Adjudicative Guideline H (Drug Involvement and Substance Misuse) and Adjudicative Guideline E (Personal Conduct). The DCAS CAS issued the SOR under

Executive Order 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 after June 8, 2017.

In an undated document, Applicant responded to the SOR (Answer) and provided four exhibits in support of his reply to the SOR. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on March 24, 2024. The case was assigned to me on March 25, 2024. DOHA issued a Notice of Hearing on April 2, 2024. I convened the hearing as scheduled on April 24, 2024. Department Counsel offered Government Exhibits (GE) 1 through 6, which I admitted without objection. (Hearing Transcript at 9-10.)

Applicant testified on his own behalf and submitted the documents attached to his Answer, which I marked as Applicant Exhibits (AE) A through D. I kept the record open for one week to give Applicant the opportunity to provide additional evidence. He timely submitted a document that I marked as AE E. In the absence of an objection, I have admitted AE E. DOHA received the transcript of the hearing (Tr.) on May 1, 2024. (Tr. at 18-21.)

Findings of Fact

Applicant is 31-years-old, married, and has no children. He earned a high school diploma in 2011 and attended a community college without earning a degree. He enlisted in the U.S. Navy in April 2015. He is presently attending college parttime and hopes to receive a bachelor's degree. (Tr. at 9-14.)

The SOR set forth allegations regarding three incidents that raise security concerns about Applicant's reliability and trustworthiness. In his Answer, Applicant admitted all of the alleged facts. The three incidents are the following:

On October 24, 2022, the Navy tested Applicant for drugs in a random drug test. The test results were positive for cocaine. On December 3, 2022, Applicant was confronted with the results. He declined to make any comments. The SOR alleged these facts and that Applicant's positive test occurred after having been granted eligibility for a security clearance. (SOR ¶¶ 1.a and 1.b; Tr. at 12-13, 41-; GE 4 at 5.)

On December 4, 2022, the Navy filed disciplinary charges against Applicant based upon his test results. On December 9, 2022, he appeared for non-judicial punishment. The commanding officer of his ship imposed a penalty of 45 days of restriction to the ship, forfeiture of half of Applicant's pay for two months, a pay-grade reduction from E-6 to E-5, and extra duties for 44 days. Applicant waived his right to appear before an Administrative Separation Board on charges related to his positive drug test. In exchange

for that waiver, he was given an honorable discharge in August 2023. He was immediately hired by his current employer as a trainer. (Tr. at 12-13, 41-47; GE 2 at 4; GE 4 at 1-2.)

On February 2, 2020, Applicant was arrested for Driving While Intoxicated, 2nd Offense within 5-10 years with a BAC level between 0.15 and 0.20. His BAC was recorded as 0.19. Applicant had been previously granted eligibility for access to classified information and held a security clearance at the time of his arrest. He subsequently pleaded guilty and was sentenced to six months of incarceration with all but ten days suspended. He was required to enroll in an alcohol and substance abuse program run by the state where he resided. His driver's license was also suspended for three years. He recently received his license back. Applicant was not punished by the Navy for this civilian offense. He referred himself, however, to the Navy Drug and Alcohol Program Advisor, and he enrolled in a Navy Substance Abuse Rehabilitation Program. He was unable to complete the program due to COVID-19 restrictions at the Navy medical facility. Applicant stopped drinking entirely after he tested positive for cocaine in October 2022, as discussed above. Applicant was never diagnosed with respect to his use of alcohol. (SOR ¶ 2.b; Tr. at 26-34, 38, 40-41; GE 5 at 1-6, 10; AE B.)

In February 2014, Applicant was arrested for Operating While Intoxicated. His BAC was 0.17 or more. He pleaded guilty to a reduced charge and paid a fine. As a result of his arrest, Applicant voluntarily sought counseling and attended a victim impact panel. Applicant had begun the enlistment process at this time, and his arrest delayed his entry into the Navy by more than a year. (SOR ¶ 2.a; Tr. at 22-26; GE 1 at 31-32, 34; GE 6 at 3.)

In June 2023, the Navy required that Applicant attend a two-month intensive outpatient drug and alcohol therapy program. The program consisted of group therapy three times per week. He testified that the program was very helpful because he learned why he repeatedly made bad choices in his life that eventually cost him his career in the Navy. He also learned that he is not able to have a healthy relationship with alcohol and cannot drink any amount of alcohol in the future. He received a Certificate of Completion, dated August 23, 2023, for this program. After his discharge from the Navy in August 2023, Applicant began individual mental health therapy with a therapist at the Department of Veterans Affairs (VA) with appointments every two weeks. The individual therapy focuses on both substance abuse and more general issues that trigger Applicant's involvement in self-destructive behaviors. He has learned that his past abuse of alcohol and his use of cocaine was a form of self-medicating that has caused much harm in his life. He has not yet received a diagnosis for his condition. (Tr. at 15, 19, 47-50, 52, 54 ; AE A.)

Applicant is presently sober and has submitted a statement declaring that he intends to remain drug-free. In the statement, he also acknowledges that any future drug involvement is grounds for the revocation of his national security eligibility, assuming he is granted eligibility again. He wrote further that he is willing to submit to random testing. Applicant testified that his wife uses marijuana, but he insisted that her conduct does not

influence him. He said that he has not used marijuana since high school and has only used other illegal drugs the one time he used cocaine in October 2022. (Tr. at 17; AE E.)

Whole-Person Evidence

Applicant submitted two character-reference letters from Navy supervisors, including a lieutenant commander. Both references describe Applicant as professional, hardworking, and a respected sailor. The lieutenant commander expressed her strong support for Applicant and her regret at the Navy losing such an excellent sailor. (AE C.)

Policies

When evaluating an applicant's national security eligibility for a security clearance, 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

Paragraph 1 (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 have carefully considered the following:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The record evidence established all of the above potentially disqualifying conditions. This shifts the burden of persuasion to Applicant to establish mitigation.

The mitigating conditions under AG ¶ 26 have been considered and the following potentially apply to the facts 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's use of cocaine while holding a security clearance occurred about 18 months ago. It is far too soon to be able to conclude that this behavior is unlikely to recur. With therapy, he is just beginning to learn what triggers his self-destructive behavior. Moreover, his actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) is not established.

AG ¶ 26(b) has also not been fully established. Applicant has acknowledged his drug-involvement and has provided evidence of actions taken to overcome this problem. He has abstained from illegal drug use since October 2022, but his abstention along with his commitment made pursuant to AG ¶ 26 (b)(3) is insufficient mitigation. It has been too brief a period since he exhibited extremely poor judgment by using cocaine at a time he was an enlistee in the Navy with a responsible job holding a security clearance. Under the circumstances, a longer period of abstinence is necessary to establish that Applicant has the maturity and judgment to refrain from future drug involvement.

Paragraph 2 – Guideline E, Personal Contact

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes the following condition that may raise security concerns and potentially be disqualifying in this case.

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The repetitive nature of Applicant's misuse of alcohol and resulting criminal conduct exhibits personal conduct that supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations indicating that he may not properly safeguard classified or sensitive information. This shifts the burden of persuasion to Applicant to establish mitigation.

The mitigating conditions under AG ¶ 17 have been considered and the following conditions potentially apply to the facts in this case:

(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; and

(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.

The above mitigating conditions have not been established. The offenses are not minor. Applicant's BAC on both occasions was very high and the pattern of two similar offenses within six years cast doubt on his reliability, trustworthiness, and good judgment. Although Applicant has acknowledged his behavior and obtained counseling, he has not shown that his behavior is unlikely to recur. He has only recently begun therapy with a VA therapist, who is assisting Applicant in understanding the causes of his self-destructive behavior.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant 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 reviewed the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given weight to Applicant's many years of service in the Navy and the highly favorable comments of his character references. The three incidents set forth in the SOR, however, reflect a significant pattern of extremely poor judgment. Applicant's recognition of this pattern and the most recent incident in October 2022 are too recent to establish mitigation of the security concerns raised by Applicant's conduct. Overall, the record evidence raises questions and doubts 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 H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge