



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



In the matter of:)	
)	
)	ISCR Case No. 23-00897
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/25/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline G, alcohol consumption, Guideline J, criminal conduct, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On June 13, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, J, H, and E. The DCSA CAS 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 with an undated response that included several attachments. He requested an administrative determination, but on July 25, 2023, Department Counsel exercised his right to request a hearing. (See hearing exhibit (HE) III) 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 18, 2024, and the hearing was held as scheduled on February 20, 2024. The Government offered exhibits (GE) 1-4, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were marked as HE I and II. Applicant testified, but he did not offer any exhibits at his hearing. I kept the record open after the hearing and he timely submitted exhibits (AE) A-C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 1, 2024.

Procedural and Evidentiary Issues

At the hearing, Department Counsel moved to amend the SOR to add a Guideline J allegation. The amended allegation was stated as follows:

4.a. In about March 2021, you were arrested and charged with vehicular Assault-DUI, in County A, State A. You plead guilty, and were sentenced to fines and fees, of \$11,355, 1.5 years confinement, 15 years' probation, and 596 hours of community service. You are still on probation and will remain so until the year 2036.

Applicant did not object to the amendment and did not request additional time to address the new allegation (although, it is in essence a cross-allegation of SOR ¶ 1.a). I granted the motion and the SOR was so amended. (Tr. 12-14)

Regarding the evidentiary issue, during Department Counsel's cross examination of the Applicant, he asserted factual information that was neither alleged nor admitted as substantive evidence. Department Counsel specifically stated as a preface to a question that the injured party died as a result of the accident. I presume he had a good-faith basis for the question, but he did not offer substantive evidence establishing that fact. He offered to do so, but he did not. I will only use this information as a basis for impeaching Applicant's testimony, and for no other purpose. The relevant rules for impeachment are laid out in the Federal Rules of Evidence (FRE) 607-609, which I used as a guide. (Tr. 53-54)

Findings of Fact

In Applicant's answer, he admitted all the allegations under Guidelines J, G, and H in the SOR with some explanation. He denied the cross-allegations under Guideline E.. 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 29 years old. He is single, never married, and has no children. He has worked as an engineer for a defense contractor since January 2020. He holds a bachelor's degree. (Tr. 6, 26-27, 45; GE 1)

Applicant moved from another state to State A in order to take his current job. Just as he began working, the pandemic occurred, and he was required to work remotely starting in March 2020. Because he was in a new state and essentially sequestered from everyone else, he was unable to make new friends or engage in social contacts. He experienced depression (his description, not a diagnosed condition). This led to a gradual increase in his alcohol consumption. By January 2021, he was drinking excessively. He drank alone. Looking back on it, he sees that he had a drinking problem. He knew he needed to stop drinking, but he was unmotivated to do so. He did not let it affect his work. This excessive alcohol consumption led to the events described below concerning Guideline G, J, and SOR ¶ 3.a of Guideline E. (Tr. 27-29)

Alcohol Consumption and Criminal Conduct

Under Guideline G, the SOR alleged Applicant was charged in March 2021, with Vehicular Assault-DUI, for which he pleaded guilty and was sentenced to fines of over \$11,000; one and a half years' confinement, 15 years' probation; and 596 hours of community service. (SOR ¶ 1.a) It also alleged that in March 2021 he was charged with DUI, pleaded guilty, and was sentenced to one year confinement (this charge derives from the same underlying factual incident alleged in SOR ¶ 1.a). (SOR ¶ 1.b) The SOR also alleged two administrative consequences from Applicant's pleas to the charges listed above. Those include that he was court-ordered to participate in DUI-education courses and out-patient therapy, which he attended from March 2021 to December 2021. (SOR ¶ 1.c) He was also ordered to install an interlock device in his vehicle for two years. (SOR ¶ 1.d)

Under Guideline J, the SOR cross-alleged the allegation in SOR ¶ 1.a and added language stating that Applicant was currently on probation and would remain so until 2036. (SOR ¶ 4.a)

As stated above, in March 2021, Applicant was still working from home. On March 2, 2021, after his work day, he began drinking whiskey at home. He later walked to a neighborhood bar and had more drinks with his dinner. He returned home after dinner and had more drinks. His roommate told him about a great ski sale that was going on. Since Applicant was an avid skier, he decided to drive to the ski store to buy some skis. He bought the skis, then stopped for some fast food. He then was driving home when he caused an accident with another car that resulted in an injury. He testified that he rearended a vehicle. The injured party stated in a magazine interview that Applicant was traveling 85 miles an hour when his car slammed into the injured party's car. (Tr. 29-30; GE 4)

The police arrived on the scene. Applicant was questioned and arrested for suspicion of DUI. Later, a blood alcohol test revealed his content was .21 percent,

where the legal limit is .08 percent. He was allowed to take a rideshare home around midnight the night of the arrest. He was later charged with two counts: Charge 1, vehicular assault-DUI, a felony; and Count 2, DUI, a misdemeanor. On June 30, 2021, he pleaded guilty to both counts. On September 17, 2021, he was sentenced as follows: for Count 1, jailtime of 1.5 years, 15 years' probation; for Count 2, 1-year jailtime, served concurrently with Count 1 (the court authorized work release for Applicant, and authorized his participation in Alcoholic Anonymous (AA) and counseling services while incarcerated). He was also ordered to pay costs and fees of approximately \$11,000. The court ordered that he could only drive using an interlock device installed for two years. The court ordered that he perform 596 hours of community service. (Tr. 31, 33-34; GE 2 (attachment 2-sentencing mittimus))

Applicant has completed the incarceration portion of his sentence. He told his employer about his circumstances, and it was supportive of him during this time and allowed him to continue working. He was placed into a work-release program where he was allowed to work at his job during the duty day and returned to a barracks-like facility after work. He would rideshare to and from work. He followed all the rules of the work-release program. (Tr. 34-35)

Applicant provided a receipt showing that he paid his court-ordered \$11,000 fines and fees in December 2021. He testified that he has completed approximately 549 hours of his required 596 hours of community service at a nonprofit organization that assists HIV-infected people. The president of the nonprofit wrote a letter for Applicant, wherein he described the work Applicant has done. The author found Applicant to be a willing, dedicated, trustworthy, and hardworking volunteer. He described Applicant as one of the best volunteers he ever had. Applicant intends to continue to volunteer at this nonprofit even after his required community service obligation is fulfilled. (Tr. 36-37; AE A-B)

Applicant remains on supervised probation. His probation release date is scheduled for 2036. He may qualify for early release, which could be in approximately 2028-2029. He meets his probation officer every two months and is drug tested three times a month. He has never failed a drug test. He still has an interlock device on his car, which is scheduled to be removed in September 2024. He has never failed the interlock testing. He has complied with all his probation terms and requirements as corroborated by his probation officer. Applicant stated that his probation officer was impressed by how quickly he was completing his community service. (Tr. 38, 50, 55-56, 62; AE C)

Applicant sought alcohol treatment on March 16, 2021, two weeks after the accident and months before he entered his guilty pleas. The therapist noted that through August 2021, he had participated in 12 education classes and 13 therapy sessions. He ultimately participated from March to December 2021, attending 12 weeks of alcohol education courses and 26 weeks of outpatient treatment. He also volunteered to participate in a more specific group setting that relates to his clinical needs. The therapist found Applicant to be remorseful for his actions and empathetic toward the

injured party. The therapist stated, "He takes this very seriously and appears to be self-motivated and invested in examining himself and detaching from destructive patterns." (Tr. 33; SOR Answer (attachment-therapist letter, August 17, 2021); GE 2 (attachment 4-DYI Level II Education and Track B Therapy Completion))

Applicant testified that he has been sober for over three years, since the day of the accident. He began attending AA daily in March 2021. He continues to attend AA at least weekly without a court order to do so. He has made friendships through AA. He is committed to sobriety for the rest of his life. A member of his AA group, Ms. CD, who is also a licensed addictions counselor, wrote a letter supporting Applicant. Ms. CD is a 33-year AA member. She wrote that Applicant has been open in AA meetings sharing about his alcoholism with the group. He also participates in AA social gatherings, which shows an authentic desire to apply AA to produce a change in his life. He associates with long-term AA members. She also opines, based upon her personal and professional experience, that Applicant is genuinely interested in changing his life. Applicant intends to remain sober the rest of his life with the help of his new healthy network of friends. He follows all laws now and does not even jaywalk. He called this incident the most traumatic experience of his life. (Tr. 38-40; SOR Answer (attachment-Ms. CD letter, July 20, 2021))

I found Applicant's testimony to be credible and based upon his observed demeanor, that he is sincerely remorseful for his actions and accepts full responsibility for them as well.

Drug Use

Under Guideline H, the SOR alleged Applicant: used marijuana from June 2013 to December 2015; used Adderall, without a prescription, from October 2015 to June 2017; used cocaine from August 2017 to March 2018; and used hallucinogenic mushrooms from July 2019 to August 2019. (SOR ¶¶ 2.a-3.d)

Applicant admitted all his drug use in his security clearance application (SCA), which occurred before his DUI arrest, and in his SOR answer. He testified that he started using marijuana in college and probably used it 200 times. He stopped when he realized it did not benefit him in 2015 or 2016. He used marijuana with his college friends who would provide it. He has no intention of using marijuana in the future. He still associates with some of the friends with whom he used marijuana, but they have also stopped using it. (Tr. 41; GE 3 (p. 8))

Applicant used Adderall, without a lawful prescription, when he was in college. It helped him stay awake to study for mid-term and final exams. He obtained it from a friend who had a prescription. He stopped using once he graduated from college in 2017. (Tr. 41; GE 3 (p. 9))

Applicant used cocaine after college. He used it when he visited a friend in a different city, before he started any professional employment. He estimated using it

approximately five times, with the last use in 2018. He has no intention of using cocaine in the future. (Tr. 41; GE 1, 3 (p. 9))

Applicant used illegal mushrooms on two occasions while on backpacking trips. He used them before he started any professional employment with the last use in 2019. He has no intention of using illegal mushrooms in the future. (Tr. 41; GE 1, 3 (p. 9))

Personal Conduct

Under Guideline E, the SOR cross-alleged the allegations in SOR ¶¶ 1.a-1.d and 2.a-2.d. (SOR ¶¶ 3.a-3.b) The underlying factual information supporting these allegations has already been detailed above and will not be repeated here.

Character Evidence

Applicant's current chief operating officer and human resources manager both wrote supportive letters for him for his criminal trial. They both were fully aware of the DUI-injury accident that he caused. They both found him remorseful over his actions and have observed his willingness to seek alcohol education. He volunteers for civic projects and clean-ups. They both asked the criminal judge to exercise leniency toward Applicant. (SOR Answer (attachments))

A family friend, who is an attorney, wrote that he talked to Applicant about the accident and believed that he was ashamed of his actions and remorseful for what he had done. In that vein, he cooperated with the injured party to insure that he received the full benefit of Applicant's insurance policy. He has seen Applicant's commitment to AA and witnessed the closeness he has with his AA sponsor. (SOR Answer (attachment))

Applicant's aunt, who is a retired special agent in federal law enforcement, also wrote on his behalf. She noted that when she first spoke to him, the first thing he did was accept responsibility for what happened. He was also remorseful. She noted his volunteer work and that he had never been in any trouble before this incident. (SOR Answer (attachment))

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 G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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 is 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.

Applicant's arrest on March 2, 2021, for Vehicular Assault-DUI, resulting from his driving with a blood-alcohol level of .21 percent and causing an injury-accident establishes this disqualifying condition concerning SOR ¶ 1.a. The allegation stated in SOR ¶ 1.b, is based upon the same underlying facts as SOR ¶ 1.a and is therefore duplicative and found for Applicant. The allegations stated in SOR ¶¶ 1.c and 1.d are elements of Applicant's sentence based upon the same underlying facts and do not establish independent disqualifying conditions. I find for Applicant regarding SOR ¶¶ 1.c and 1.d on that basis.

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; 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.

Although Applicant's injury-causing DUI offense was very serious, it was his only offense before or since the incident. He has complied with all the court ordered requirements such as completing his one-year work-release incarceration, paying his fines, nearly completing his 596 hours of community service, installing an interlock device on his car, and complying with all his other probation requirements. He participated in alcohol education and therapy and remains sober three years after the accident. He is fully immersed in the AA program as corroborated by several persons who made statements for him. His treatment therapist believes he is motivated to examine himself and change his destructive drinking patterns. He is committed to a sober lifestyle and has acted in furtherance of that lifestyle. Both AG ¶¶ 23(a) and 23(d) substantially apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and

(c) individual is currently on parole or probation.

Applicant's March 2021 Vehicular Assault-DUI and DUI charges and convictions support the application of AG ¶ 31(b). The evidence also established that Applicant is currently on probation. AG ¶ 31(c) also applies.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

For the same reasons stated above under Guideline G, AG ¶ 32(a) substantially applies here. Even though Applicant could be on probation until the year 2036, he has established a documented track record of compliance with his probation requirements. While he remains on probation, I am convinced he will remain compliant with those requirements in the future. AG ¶ 32(d) also substantially applies here.

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.

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

(a) any substance misuse.

Applicant used marijuana, Adderall without a prescription, cocaine, and illegal mushrooms during the dates alleged. AG ¶ 25(a) applies.

AG ¶ 26 provides conditions that could mitigate security concerns. One potentially applies 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.

Applicant credibly testified that all his illegal drug use ceased by 2019. His marijuana use, which was the most frequently used drug, ceased while he was still in college. His remaining drug use ceased after college in 2017. He is committed to a sober lifestyle and does not intend to use illegal drugs in the future. His active AA participation favors his current reliability, trustworthiness, and judgment. AG ¶ 26(a) applies.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

Applicant's drunk driving incident that resulted in a serious injury to the victim and his drug use while in college and shortly thereafter, reflects questionable judgment and an unwillingness to comply with rules and regulations. AG ¶ 16(c) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following is potentially applicable:

(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 analyses under Guidelines G, J, and H apply equally here. Personal conduct security concerns are mitigated.

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. Applicant provided sufficient evidence to mitigate the alleged security concerns.

[Since he remains on probation for some time (which is disqualifying under Guideline J), you might bolster the WPC analysis by again noting your positive assessment of his demeanor and credibility as well as his proven track record of compliance with probation requirements thus far, as well as other WPC character evidence].

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under all Guidelines, or those concerns were not established.

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: Subparagraphs 1.a – 1.d:	FOR APPLICANT For Applicant
Paragraph 2, Guideline H: Subparagraphs 2.a - 2.d:	FOR APPLICANT For Applicant
Paragraph 3, Guideline E: Subparagraphs 3.a - 3.b:	FOR APPLICANT For Applicant
Paragraph 4, Guideline J: Subparagraphs 4.a:	FOR APPLICANT For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge