



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



In the matter of: )  
)  
) ISCR Case No. 23-01343  
)  
Applicant for Security Clearance )

**Appearances**

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

08/07/2024

---

**Decision**

---

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On December 1, 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, H, J, and E. The DCSA CAS acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on February 6, 2024, and elected to have his case decided by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 22, 2024. The evidence included in the FORM is identified as Items 2-6. (Item 1 includes pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on March 26, 2024. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence. The case was assigned to me on July 2, 2024.

### **Findings of Fact**

In Applicant's answer, he admitted all the allegations under Guidelines J (except SOR ¶ 1.j) G (except SOR ¶ 2.f), H, and E in the SOR with some 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 58 years old. He has worked as a senior designer-specialist for a defense contractor since November 1994. He holds an associate degree. He served in the U.S. Navy from 1983 to 1987, until his honorable discharge. He is twice divorced. His first marriage was from 1984 to 1989, and his second was from 1994 to 1996. He has two adult children. (Item 2)

### **Alcohol Consumption, Criminal Conduct, and Personal Conduct.**

Under Guideline G, the SOR alleged Applicant: consumed alcohol to excess between January 1975 and at least February 2021 (SOR ¶ 1.a); was arrested and charged with driving under the influence of alcohol (DUI) in 1987, 1990, 1997, 2001, 2011, and 2021 (SOR ¶¶ 1.b-1.g); received alcohol treatment from September 1997 to about September 1998, for a condition diagnosed as alcohol dependence (SOR ¶ 1.h); received alcohol treatment from April 2021 to the present, for a condition diagnosed as alcohol dependence (SOR ¶ 1.i); and continues to consume alcohol, notwithstanding his treatment for a condition diagnosed as alcohol dependence (SOR ¶ 1.j). All these allegations were cross-alleged as criminal conduct and personal conduct security concerns under Guidelines J and E. (Item 1)

During Applicant's background interview (BI) to an investigator in July 2022, he stated that he started consuming alcohol when he was about 10 years old. He would drink with neighborhood friends two to three times a week and consume three to four beers each time. He did this because of peer pressure. From about 1980 until about 2001, he would consume as much as 18 beers a night with friends. He drank because he became addicted to alcohol. He would drink to intoxication. He stopped drinking alcohol from 2001 to 2008 because of his 2001 DUI arrest. He resumed drinking in 2008 because he was tired of attending Alcoholics Anonymous (AA) meetings and having his AA sponsor call him every day. Between 2008 and March 2021, he drank 6 to 12 beers

daily. He admitted his DUI arrests in 1987, 1990, 1997, 2001, 2011, and March 2021. (Item 3 (page numbers at bottom center of July 2022 BI: pp. 6-9))

After Applicant's DUI arrest in 2001, where he consumed 24 beers within 10 hours, he voluntarily entered an alcohol treatment program. [Note: the record contains a discrepancy concerning the date of this alcohol treatment program. In his BI, he claimed it occurred in 2001, but in his May 2022 security clearance application (SCA), he stated his treatment occurred from September 1998 to November 1998; but then in a sworn statement he gave in July 2001, he claimed this treatment took place in August 1997. Since this was an administrative determination, I had no opportunity to question Applicant to clarify this discrepancy]. He was apparently diagnosed with a substance abuse disorder by a Dr. C in 1992 to 1993. In his July 2001 sworn statement, he stated that he did not plan to consume alcohol in the future. (Item 2: May 2022 SCA (p. 35); Item 3: July 2022 BI (pp. 8, 14), Applicant's July 2001 sworn statement (p. 20))

In April 2021, Applicant voluntarily entered another alcohol treatment program. He claimed that he continues with this program currently, seeing his two counselors on either a weekly or biweekly basis. No information was presented about the specifics of this treatment program, but one of his counselors provided a letter from March 2023, stating that Applicant successfully completed substance abuse treatment for alcohol and that he had completed two years of sobriety. He further stated that based upon this history, he believed there was a "high probability to not have further legal difficulty." (Item 2: May 2022 SCA (p. 36); Item 3: July 2022 BI (pp. 4, 8))

### **Drug Use, Criminal Conduct, and Personal Conduct**

Under Guideline H, the SOR alleged Applicant: used marijuana from May 1973 to about December 2020; used LSD from January 1981 to about August 1997; used mescaline from January 1981 to August 1997; used hashish from January 1981 to August 1997; was arrested in about 2002 for possession of marijuana; and used marijuana, LSD, mescaline, and hashish while granted access to classified information. (SOR ¶¶ 2.a-2.f) All these allegations were cross-alleged as criminal conduct and personal conduct under Guidelines J and E. (Item 1).

Applicant admitted all his drug use in his SOR answer. With regard to his use of drugs while granted access to classified information, Applicant claimed he only used marijuana through 2020. He has held a security clearance since 1984. He used marijuana on an almost daily basis from 1996 to 2001, and again from 2008 to 2020. His use of the other drugs, LSD, mescaline, and hashish, in 1997, was experimental. He claims he has not used any illegal drugs since December 2020. (Items 1, 3 (pp. 10, 14))

### **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 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;

(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;

(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's six DUI arrests between 1987 and 2021, and his approximately 45-year-history of binge alcohol drinking establish disqualifying conditions AG ¶¶ 22(a) and 22(b).

While there is some evidence in the record concerning Applicant's diagnosis of substance abuse, that information is ambiguous and the qualifications of the source of the diagnosis is not established. Additionally, treatment advice was not specifically identified in the record. I conclude that AG ¶¶ 22(d) through 22(f) are not established for SOR ¶¶ 1.h and 1.i. Also, SOR ¶ 1.j is found for Applicant because, as pled, the Government did not establish that Applicant continues to consume alcohol despite contrary medical advice.

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;

(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.

Applicant has a long history of abusing alcohol, which began in 1975 and continued through 2021. During that time frame, he would consume as much as 12 beers daily. While he should be commended for finally recognizing the severity of his alcohol problem when he sought treatment in 2021, his claimed sobriety since then of approximately three years, is insufficient to establish that similar alcohol abuse will not recur in the future. This is particularly true since Applicant told a background investigator back in 2001 that he would not consume alcohol in the future, and he had already been through at least one alcohol treatment program at that time. His reliability, trustworthiness, and judgment still remain a question. AG ¶¶ 23(a) and 23(d) do not apply.

Applicant claims that he participates in weekly or semiweekly counseling or therapy, which again is commendable. However, he has a history of entering a treatment program in 1997, 1998, or 2001, and subsequently relapsing back to consuming alcohol. While he presented a document from his counselor reflecting his completion of his 2021 completion program, there is no evidence in the record concerning his CURRENT ongoing treatment and his progress in it, if any. AG ¶ 23(c) does not apply.

Applicant completed an alcohol treatment program in 2021 and claims total abstention since that time. Given his long history of alcohol abuse, his claimed period of sobriety of three years is insufficient to overcome that history. While AG ¶ 23(d) has some application here, however, it is not controlling to mitigate Applicant's alcohol consumption concerns.

### **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

Applicant's six DUI arrests and his multiple uses of illegal drugs, including marijuana, LSD, mescaline, and hashish, and his arrest for possession of marijuana support the application of AG ¶ 31(b). The allegations listed in SOR ¶¶ 1.a and 1.h-1.j do not allege criminal conduct and are found in favor of Applicant.

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) and 32(d) do not apply.

### **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. Several that are potentially applicable in this case include:

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

Applicant used marijuana, LSD, mescaline, and hashish during the dates alleged. He also possessed marijuana. He admitted using marijuana while having access to classified information. AG ¶¶ 25(a), 25(c), and 25(f) apply.

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 stated that all his illegal drug use ceased by December 2020. His marijuana use, which was the most frequently used drug, ceased at that time. His remaining drug use ceased in approximately 1997. 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 binge drinking history over 45 years, his multiple DUI arrests, his marijuana and other drug use and possession, while having access to classified information 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 analysis under Guidelines G and J apply here as well. Personal conduct security concerns are not 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 insufficient evidence to mitigate the alleged security concerns.

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 Guidelines G, J, and E. He mitigated the concerns under Guideline H.

### **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.g: Subparagraphs 1.h - 1.j:	AGAINST APPLICANT Against Applicant For Applicant
Paragraph 2, Guideline H: Subparagraphs 2.a - 2.f:	FOR APPLICANT For Applicant
Paragraph 3, Guideline J: Subparagraph 3.a:	AGAINST APPLICANT Against Applicant (except when referring to SOR ¶¶ 1.a and 1.h-1.j)
Paragraph 4, Guideline E: Subparagraph 4.a:	AGAINST APPLICANT 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.

---

Robert E. Coacher  
Administrative Judge