



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-00535
)
 Applicant for Security Clearance)

Appearances

For Government, Andre M. Gregorian, Esq., Department Counsel
For Applicant: Matthew J. Thomas, Esq.

08/16/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines G (Alcohol Consumption) and I (Psychological Conditions). Applicant mitigated the security concerns under Guideline I, but he did not mitigate the security concerns under Guideline G. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 17, 2021. On August 22, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G and I. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on October 30, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 1, 2023, and the case was assigned to me on May 3, 2024. On May 28, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 12, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on June 25, 2024.

Department Counsel requested that I take administrative notice of the portions of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), pertaining to alcohol use disorder and the facts set out in a publication of the National Institute on Alcohol Abuse and Alcoholism entitled "Understanding Alcohol Use Disorder." (Hearing Exhibit I) I took administrative notice as requested, without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b. He admitted the allegations in SOR ¶¶ 1.c and 1.d in part and denied them in part. His admissions are incorporated in my findings of fact.

Applicant is a 34-year-old software engineer employed by a defense contractor since November 2016. He received a bachelor's degree in computer engineering in May 2014. He worked for a state employer from January 2011 to May 2014, was unemployed from May to November 2014, worked for a non-federal employer from November 2014 to November 2015, and was unemployed from November 2015 until he was hired by his current employer. He has never married and has no children. He received a security clearance while working for his current employer.

SOR ¶ 1.a alleges that in January 2010, Applicant was charged with public intoxication after consuming six to eight beers and attempting to walk home. SOR ¶ 1.b alleges that in October 2012, Applicant was charged with urinating in public after consuming beer and up to eight drinks at a bar. Applicant admitted both allegations and disclosed his conduct in his SCA. Both charges were resolved by probation before judgment and community service. (Tr. 18-19)

SOR ¶ 1.c alleges that from September 2015 to at least July 2023, Applicant consumed about six beers daily. He moved from his home state to another state in April 2018 when he was promoted. He self-isolated due to COVID 19 and started having panic attacks. He increased his beer consumption from one or two beers a few times a week to a six-pack every night. (Tr. 23) In late 2020, he consulted with his primary care doctor about his increasing panic attacks, and his conversations with his doctor began to include discussion of his drinking. After cognitive tests confirmed his anxiety disorder and attention deficit hyperactivity disorder (ADHD), he began talk therapy in late 2021. (Tr. 25-26)

When Applicant was interviewed by a security investigator in September 2021, he stated that he had been drinking six to seven beers daily since September 2015. (GX 2 at 11) He provided the same information in response to DOHA interrogatories in July 2023. (GX 2 at 4-5)

Applicant moved back to his home state in November 2021. In June 2022, he started receiving therapy from a licensed clinical professional counselor (LCPC) for anxiety, alcohol use, and ADHD. The LCPC did not have concerns about Applicant's ability to hold a security clearance so long as he continued receiving treatment for his anxiety and alcohol use. Applicant discontinued therapy in October 2022 because it was expensive, and he wanted to find a provider who was closer to his home and would accept his insurance.

SOR ¶ 2.a alleges that Applicant was evaluated by a licensed psychologist in October 2022 and diagnosed with generalized anxiety disorder, that the psychologist opined that he would benefit from psychotherapy to address his use of alcohol to cope with his anxiety, and that his prognosis was guarded due to lack of ongoing individual therapy. This evaluation was conducted by a licensed psychologist at DCSA's request, due to concerns about Applicant's use of alcohol and symptoms of anxiety. At the time he was evaluated, he was receiving medication for ADHD. He told the psychologist that he still had symptoms of anxiety, overthinking, and shortness of breath, and that he used alcohol at night "to calm down, decrease anxiety, turn my mind off, and decrease the thoughts." (GX 3 at 3) The psychologist diagnosed him with alcohol use disorder, mild; ADHD, unspecified; and generalized anxiety disorder. The psychologist concurred with the LCPC's belief that there would be concerns about Applicant's judgment only if he discontinued treatment. The psychologist gave him a "guarded prognosis, due to a lack of ongoing individual therapy." (GX 3)

In January 2023, Applicant resumed treatment with the LCPC, and he continued to have regular sessions at least once a month up to the date of the hearing. The LCPC diagnosed Applicant with generalized anxiety disorder. She did not provide a prognosis. (AX A)

When Applicant responded to DCSA interrogatories in July 2023, he disclosed that he consumed six beers a day and consumed alcohol to the point of intoxication once a week. (GX 2 at 3-5) He disclosed that he was currently receiving counseling and taking an anti-anxiety medication. (GX 2 at 8) At the hearing, he testified that he is now taking a medication that has reduced his daily panic attacks to the point where they are rare. (Tr. 29) He also testified that he last drank to the point of intoxication and passed out in March 2024. Before March 2024, he was drinking to the point of blacking out about once a month. (Tr. 41-42)

None of the medical professionals have advised Applicant to abstain completely from consuming alcohol. However, he testified that he stopped drinking completely about four months before the hearing. He admitted that the hearing was part of the motivation to stop drinking, but that his decision was also motivated by his concern for his health,

having been warned by a friend who is a cardiac rehabilitation specialist. (Tr. 43) He agreed that it is too soon to tell if he can continue abstaining from alcohol. He testified, "I'm dedicated to it, but it's a disease at the end of the day." (Tr. 44)

Applicant began seeing a licensed nurse practitioner in psychiatry on May 8, 2024, who diagnosed him with anxiety and a mild alcohol use disorder. Unlike the other medical professionals he has seen, the nurse practitioner is authorized to prescribe medications for alcohol deterrence. (Tr. 44-45)

Applicant intends to continue receiving treatment from the LCPC and the nurse practitioner. He has attended some Alcoholics Anonymous (AA) meetings since July 2023, but he did not find them helpful. (Tr. 59-60) He completed a four-hour drug and alcohol awareness class in June 2024. (AX C)

A co-worker who has known Applicant for four years and worked with him for two years submitted a letter supporting his application for a security clearance. She described him as the "go to" software engineer on any security questions, due to his technical knowledge and experience. (AX B at 1)

A friend and former neighbor, who is a single mother of two children, regards Applicant as a close friend. Her children spent time with him and looked forward to seeing him regularly. (AX B at 2)

A friend who is a registered nurse had a brief romantic relationship with Applicant and continues to be a close friend. She is aware of his excessive alcohol consumption and has encouraged him to stop drinking. She has observed Applicant's progress in reducing his alcohol consumption. She states that staunch honesty is the hallmark trait of Applicant's character, and she is confident that he can be placed in a responsible position and entrusted with classified information. (AX B at 3)

A close friend of Applicant for 20 years regards him as "an older brother figure." He states that Applicant "demonstrates sound judgment, dedication, and compassion to those around him and his community." (AX B at 6)

A former co-worker and longtime friend states that Applicant has consistently demonstrated "a deep-seated commitment to quality, ethical practices, and dedication to the protection of classified information." He believes that Applicant has a "strong moral compass, both professionally and personally." He is aware of Applicant's problem with anxiety and has observed how he handles it in a classified environment. He has no concerns about Applicant's loyalty or trustworthiness, both on a personal level as well as with the handling of classified information." (AX B at 7-8)

A close friend who is a healthcare professional has known Applicant since April 2017. The friend and her husband have spent a lot of time together with Applicant at recreational events and on road trips. She is confident that Applicant has the reliability,

dedication and loyalty that is required for individuals with a security clearance. (AX B at 11.)

A professional colleague employed by a state government describes Applicant as “a creator, a solver of problems [and] a moral person who believes in social justice.” This colleague is aware of Applicant’s struggle with ADHD. She believes that Applicant has character and integrity and is worthy of a security clearance. (AX B at 10)

The president of the company that is Applicant’s employer describes him as a “thoughtful and level-headed engineer.” He was unaware that Applicant had a problem with his alcohol consumption until Applicant disclosed it to him. His company has hosted numerous social events for employees, and the events usually include alcohol, but he has never observed any conduct by Applicant that would raise an issue. To the contrary, Applicant has always been “responsible and appropriate” at these events. (AX B at 5)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

Analysis

Guideline G (Alcohol Consumption)

The security concern under this guideline is set out in AG ¶ 21: “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.”

Applicant’s admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder;

AG ¶ 22(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

AG ¶ 22(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.

The following mitigating conditions are potentially applicable:

AG ¶ 23(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

AG ¶ 23(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.

AG ¶ 23(a) is not established. Applicant's excessive alcohol consumption is recent and was frequent until about four months ago. It did not occur under unusual circumstances.

AG ¶ 23(b) is not fully established. Applicant has acknowledged his maladaptive alcohol use and has refrained from consuming alcohol for about four months. He is receiving regular counseling from medical professionals for his anxiety and ADHD and recently has stopped consuming alcohol as self-medication for his psychological conditions. However, insufficient time has passed to establish a pattern of modified consumption or abstinence.

Guideline I, Psychological Conditions

The concern under this guideline is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The following disqualifying conditions under this guideline may be applicable:

AG ¶ 28(a): behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but

not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors; and

AG ¶ 28(b): an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

AG ¶ 28(a) is established. Applicant has been diagnosed with an anxiety disorder, ADHD, and alcohol use disorder. He admitted that, until recently, he self-medicated with alcohol as a means of controlling his anxiety and panic attacks. He recognizes that his heavy drinking is unhealthy.

AG ¶ 28(b) is established. The psychologist and the LCPC who have treated Applicant have expressed reservations about his judgment if he discontinues his current therapy program.

The following mitigating conditions are potentially applicable:

AG ¶ 29(a): the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

AG ¶ 29(b): the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

AG ¶ 29(c): recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation; and

AG ¶ 29(e): there is no indication of a current problem.

AG 29(a) is partially established. Applicant's anxiety and ADHD are readily controllable. Applicant has demonstrated ongoing and consistent compliance with his treatment plan for anxiety and ADHD. However, he admitted at the hearing that it is too soon to tell if he can continue abstaining from alcohol.

AG ¶ 29(c) is not established. Applicant presented no evidence from a duly qualified mental health professional employed by or acceptable to and approved by the U.S. Government.

AG ¶ 29(e) is established, to the limited extent that there has been no indication of a problem within the past four or five months.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines G and I in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was sincere, candid, and credible at the hearing, but he admits that it is too soon to tell whether he can refrain from further maladaptive alcohol use. After weighing the disqualifying and mitigating conditions under Guideline G and I and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns under Guideline I raised by his anxiety disorder, but he has not mitigated the security concerns under Guideline G raised by his maladaptive alcohol use.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline G (Alcohol Consumption): **AGAINST APPLICANT**

 Subparagraphs 1.a-1.c: **Against Applicant**

Paragraph 2, Guideline I (Psychological Conditions): **FOR APPLICANT**

 Subparagraph 2.a: **For Applicant**

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge