



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



In the matter of: )  
)  
) ISCR Case No. 23-02039  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

10/28/2024

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**Decision**

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DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the alcohol consumption and personal conduct security concerns. She mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 30, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption), Guideline H (drug involvement and substance misuse), and Guideline E (personal conduct). Applicant responded to the SOR on December 19, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2024.

After conferring with the parties, the matter was scheduled for hearing on September 17, 2024. The hearing was convened as scheduled. I admitted Government Exhibits (GE) 1 through 5 and 7 and 8 without objection. I overruled Applicant's objection to GE 6 and admitted that evidence, as well. I admitted Applicant Exhibits (AE) A through D in evidence without objection. I marked the parties' exhibit lists as Hearing

Exhibits (HE) 1 (Government) and HE 2 (Applicant). I received a transcript (Tr.) of the hearing on September 24, 2024.

### **Findings of Fact**

Applicant is a 33-year-old employee of a defense contractor. She has worked for her current employer since about June 2011. She earned a high school diploma in 2009 and has been taking undergraduate degree courses but has not earned a degree. She has been married since 2023. She has a 15-year-old daughter. She enlisted for active reserve duty with the Army National Guard in August 2012 and was medically discharged in February 2013. She has held a security clearance since 2011. (Tr. 89; GE 1, 2; AE A, D)

Applicant has had struggles with alcohol. Sometime in 2015, her alcohol consumption increased to the point where she was drinking about eight beers at a time on three to four occasions per week. In about 2016, she voluntarily sought professional outpatient treatment because she was prioritizing alcohol over other things. She combined this alcohol treatment with other mental health treatment she was receiving from a nurse practitioner (NP) with a master's degree in nursing. The NP prescribed her medication to help her drink less. Her intention with this treatment was to abstain from alcohol. She managed to abstain for months at a time before she would drink a little again and start over. This cycle lasted until about 2019, when her drinking "kicked up a gear again." (Tr. 38-50; Answer; GE 1, 2)

By 2020, Applicant was noticing side effects when she did not consume alcohol. She was also being harassed by a co-worker at work. She voluntarily entered a 30-day inpatient alcohol counseling program for detoxification. Upon entry into the program, her plan was to abstain from alcohol. While in this program, she was diagnosed with alcohol use disorder, severe. She claimed that the "severe" portion of this diagnosis may have been influenced by insurance coverage requirements based on what she was told during her treatment. She believed that her alcohol use disorder was not "severe," because she could function at work and was not getting into legal trouble because of her drinking. While receiving inpatient treatment, she disclosed to her caregivers that she occasionally used marijuana to help her sleep. Upon discharge from the inpatient program, she was advised to abstain from all mood-altering chemicals, including alcohol. It was also recommended that she continue to receive alcohol counseling, such as Alcoholics Anonymous (AA). She attended a few AA meetings, but claimed she stopped because of its religious aspect. She also attended a few secular-based support groups, and, in November 2020, began seeing another therapist (Therapist). (Tr. 38-40, 50-54, 63-64; Answer; GE 5)

Applicant met with the Therapist for counseling approximately six to ten times in 2020. The Therapist diagnosed her with alcohol dependence, in remission. The Therapist's diagnosis was based upon Applicant's representation that she had been abstinent for several months. The Therapist advised her not to consume alcohol. She stopped seeing the Therapist because she did not like the care the Therapist was providing. She also continued to meet with the NP. In 2020, the NP diagnosed her with

alcohol use disorder, mild. The NP advised her not to consume alcohol. Sometime in 2021, after seven or eight months of sobriety, Applicant began consuming alcohol again. She claimed that her alcohol consumption was in moderation, and she did not “abuse” it. She claimed she drinks a glass of wine with dinner and has a drink or two socially. The last time she was intoxicated was at the beginning of 2024. She claimed it takes her two or three drinks to become intoxicated and she has had four or more drinks five or six times in 2024. She had four or more drinks about 12 times in 2023. She claimed she can moderate her alcohol consumption without abstaining because she is in a better place professionally and at home. Her husband consumes alcohol at about the same rate she does, and he has modified his consumption as well. (Tr. 38-40, 50-65; Answer; GE 4-7)

Between 2018 and 2020, Applicant’s future father-in-law gave her about five oxycodone pills for which she did not have a valid prescription. Some years prior to this, she had a valid prescription for oxycodone, but it had lapsed. In about January 2020, she took one of these oxycodone pills not prescribed to her because she was having back pain during a long car ride. She does not recall a time where she took one of these oxycodone pills before or after her January 2020 use. Also, in January 2020, she was driving her father-in-law’s vehicle to work when security forces at her work building stopped her at the entry gate for a random vehicle search. They found a bottle of oxycodone pills in the center console that were prescribed to her father-in-law. They searched her purse and found three, five-milligram oxycodone pills for which she did not have a valid prescription. Initially, she told the security forces that the three pills were not oxycodone, but she later admitted they were. She told security forces she very seldom used the oxycodone and does not have a substance abuse problem. The next day, she took a urinalysis test, and the results were negative for illegal substances. She also provided information from her medical services providers who indicated she did not have an opioid addiction. She completed at least three urinalysis tests in August 2020 and her results were negative for illegal substances. (Tr. 67-71, 77-79; Answer; GE 2-5, 7)

In August 2020, Applicant used marijuana on about ten occasions while she held a sensitive position. She provided this information to health care professionals during her inpatient alcohol treatment. She obtained a medical marijuana card in about 2016 or 2018. She renewed it once but cannot recall when she did so. She guessed it was in 2020. She has not used marijuana since about August 2020. (Tr. 73-77; Answer; GE 4, 5)

In about December 2020, Applicant reported to the Therapist that she used the prescription drug tramadol, a synthetic opioid, as a “mood boost.” She did not have a valid prescription when she used it. She bought a bottle of it in Mexico and used it “occasionally,” but she cannot remember when. She testified the last time she took it was prior to her inpatient alcohol treatment. (Tr. 70-72, 77-79; Answer; GE 4, 5)

The DCSA CAS requested that Applicant undergo a psychological evaluation. The evaluation was conducted by a licensed psychologist (Psychologist) on January 30, 2023, and she issued her report shortly thereafter (Report). On March 31, 2023, she

issued an addendum (Addendum) to her report that addressed additional information regarding Applicant's marijuana use. The Psychologist diagnosed Applicant with alcohol use disorder, moderate, in remission. The Psychologist was aware that Applicant had been consuming some alcohol, however, there is no evidence that the Psychologist was aware that Applicant was drinking it to the point of intoxication. In the Report, the Psychologist wrote that she did not have concerns about Applicant's judgment, ability to control impulses, or questions about her reliability and trustworthiness. During her interview with the Psychologist, Applicant did not disclose her 2020 marijuana use because she thought she could hide this information from the Psychologist. In the Addendum, the Psychologist opined that because Applicant only disclosed her marijuana use as a teenager, and not her use in 2020, the Psychologist had a concern about Applicant's candor. The Psychologist opined that although she had concerns regarding Applicant's trustworthiness, Applicant did not meet the criteria for a substance abuse disorder. Applicant claimed that another reason she did not tell the Psychologist about her 2020 marijuana usage was that she thought she was in a "gray area" of using medical marijuana and because she "panicked." She acknowledged she did not respond appropriately. (Tr. 79, 88; Answer; GE 4, 8)

Despite being required to do so, Applicant did not list her marijuana use on her 2020 Electronic Questionnaires for Investigations Processing (SF 86). Despite being required to do so, she failed to list her misuse of the prescription drugs oxycodone and tramadol. Despite being required to do so, she failed to list her oxycodone and marijuana use while she held a security clearance. She acknowledged that she failed to properly list this information because she was afraid she would lose her clearance and her job. She claimed a union chief steward she worked with, who allegedly is a person who gives advice people can rely upon about security clearance questions, told her she could "personally interpret" the questions when she sought his advice about completing these questions on the SF 86. The chief steward allegedly told her she could appropriately avoid disclosing her marijuana usage because of the distinction between state and federal law. However, Applicant acknowledged she knew marijuana was an illegal drug under federal law when she completed and certified the SF 86. She also knew it was an illegal drug under federal law when she asked for advice from the chief steward. At the time she was filling out the SF 86, she also claimed she interpreted this question to only require disclosure of the "abuse" of oxycodone and she did not believe she was abusing it. She further claimed that when she filled out the SF 86, she believed that because she got her tramadol at a pharmacy, she did not have to report it. She did not rely on anyone's advice with respect to not disclosing her misuse of prescription drugs. She claims she now knows that she should have reported all these things on her SF 86. She did not divulge any of this information before being confronted. (Tr. 72-73, 79-91; Answer)

Applicant performs well at her job and provided several character-reference letters from friends, family, and colleagues. In those letters, these individuals, who have known her throughout the breadth of her career with her employer, note that she is honest, reliable, diligent, hardworking, loyal, and dedicated. They wrote about her rapid advancement at work. Several of these individuals are veterans and hold security clearances. They believe she should maintain her security clearance eligibility. She has

been regularly and consistently promoted and rewarded for her achievements at work. She has also been involved with her local union. (Tr. 28-37; Answer; AE A-D)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(c), the entire process is a conscientious scrutiny 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."

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern for alcohol consumption 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable in this case:

- (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.

In 2020, Applicant was diagnosed by a duly qualified health professional with an alcohol use disorder. AG ¶ 22(d) is established. She continues to consume alcohol despite a medical professional advising her she should abstain. AG ¶¶ 22(e) and 22(f) are also established.

However, I find for Applicant with respect to the allegations contained in SOR ¶ 1.a. Voluntarily seeking alcohol-related treatment, taking medication to reduce cravings, but then consuming alcohol again without evidence of impaired judgment is not disqualifying.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified

consumption or abstinence in accordance with treatment recommendations; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant is to be commended for voluntarily seeking treatment for her issues with alcohol. However, importantly, the healthcare professionals that treated her recommended she no longer consume it. I am also troubled by the fact that she drinks to intoxication several times per year. This level of alcohol consumption causes me to question her reliability, trustworthiness, and judgment and does not conform with her treatment recommendations. While the Psychologist found that her alcohol use disorder is in remission, neither the Report nor the Addendum reflect that the Psychologist was aware that Applicant consumed alcohol to the point of intoxication, or that she does so as often as she does. AG ¶¶ 23(a), 23(b), and 23(d) do not apply.

#### **Guideline H, Drug Involvement and Substance Misuse**

The security concern for drug involvement and substance misuse is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (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 (and therefore possessed) marijuana, an illegal drug, with varying frequency in about 2020. She used marijuana while she held a sensitive position. She misused the prescription drugs oxycodone and tramadol without a valid prescription. The above-referenced disqualifying conditions are established.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; and

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

It has been about four years since Applicant used or possessed an illegal substance. She acknowledged that she should not have used or possessed these substances. Her abuse of oxycodone was after this painkiller had been prescribed to her, and she has since ceased use of that drug. I find that her past substance misuse does not cast doubt on her current reliability, trustworthiness, and good judgment. She has also established a sufficient pattern of abstinence. All of the above mitigating factors apply to some degree.

### **Guideline E, Personal Conduct**

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

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.



The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately omitted her misuse of marijuana and prescription drugs from the SF 86. She also deliberately omitted from the SF 86 her use of oxycodone and marijuana while she held a security clearance and held a sensitive position. She admitted that she deliberately omitted this information because she was afraid that she would lose her security clearance and her job. AG ¶ 16(a) is established.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused, or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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.

Applicant did not correct her deliberate omissions from the SF 86 before being confronted. Instead, in January 2023, she again omitted her 2020 marijuana use during her interview with the Psychologist because she thought the Psychologist would not find out about it. AG ¶ 17(a) does not apply.

While Applicant received advice from her union's chief steward about how to answer the questions on her SF 86 relating to her marijuana misuse, she knew she

should have disclosed her marijuana use and was simply trying to come up with a plausible excuse to omit it. Therefore, her omission was not caused or significantly contributed to by this individual. She did not seek the same individual's advice regarding her prescription drug misuse and the need to disclose it. AG ¶ 17(b) does not apply.

Deliberately omitting required information from an SF 86 is not minor. Instead, this omission strikes at the heart of the security clearance process, which relies on candid and honest reporting. Applicant engaged in this deceitful and misleading conduct to protect her security clearance and employment. She did so again in 2023, when she failed to disclose her 2020 marijuana use to the Psychologist because it was derogatory, and she thought she would not get caught. For these reasons, she has not shown that her behavior was infrequent, happened under unique circumstances, or is unlikely to recur. AG ¶ 17(c) does not apply.

Applicant has acknowledged her dishonest behavior to some degree. However, her continued attempts to claim that she omitted her 2020 marijuana use on the advice of her union's chief steward, despite knowing she should have disclosed that information regardless of his advice, detracts from this acknowledgement. Additionally, for the reasons I provided in my analysis of AG ¶ 17(c), I do not find that her dishonest behavior is unlikely to recur. AG ¶ 17(d) does not apply.

### **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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G, H, and E in my whole-person analysis. I have also considered Applicant's strong employment record and her good character references. However, I find that the totality of the evidence, especially her continued drinking to intoxication, and her dishonesty on the SF 86, leaves me with questions and doubts about her eligibility and suitability for a security clearance. I find the Guideline H security concerns were mitigated, but the Guideline G and Guideline E security concerns were not mitigated.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.c:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge