



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-01051
)
 Applicant for Security Clearance)

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: Lucas Donovan, Personal Representative

11/22/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 23, 2021. On August 11, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and E (Personal Conduct). 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 February 9, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 1, 2024, and the case was assigned to me on August 5, 2024. On September 6, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 9, 2024. I convened the hearing as scheduled.

The SOR allegations under Guideline E were erroneously numbered as SOR ¶¶ 2.a and 2.b instead of SOR ¶ 3.a and 3.b. The SOR was corrected by numbering the allegations under Guideline E as SOR ¶¶ 3.a and 3.b. (Tr. 11)

Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. DOHA received the transcript (Tr.) on October 22, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 33-year-old systems engineer employed by a defense contractor since April 2015. He received a bachelor's degree in December 2013. He has lived with a cohabitant, whom he married in September 2024, since July 2018. He has no children. He received a security clearance in August 2015.

Applicant began consuming alcohol every month or two in the summer of 2008 and fall of 2009, while he was in high school. In college, he drank about once a week, consuming one to eight drinks per occasion at parties. He was arrested for public intoxication in 2012, but no charges were filed, and he was released to the custody of his father. (Tr. 108; GX 2 at 39) After college, during January 2013 to December 2016, he drank about once a week, consuming one to six drinks per occasion. From January to May 2017, he drank four times a week, consuming one to six drinks per occasion. From June 2017 to December 2018, his drinking increased to four to seven drinks per day. His drinking decreased in January 2018 while he was living with his parents. From March 2018 to September 2019, he was consuming 5 to 7.5 drinks daily. (Answer at § 1.3.2.2.1.2 through § 1.3.2.2.1.7)¹

Applicant began smoking marijuana in high school and stopped using it in January 2017, because he was working with classified information and knew that he might be tested for drugs. He compensated for not using marijuana to control his anxiety by consuming alcohol instead of smoking marijuana. He resumed his marijuana use in June 2017 to control his anxiety. (Answer at § 1.3.2.2.1.4)

¹ Applicant's response to the SOR is not paginated, but the paragraphs are identified with numbers and decimal points.

Applicant began using cocaine in 2009, during his freshman year in college, and he used it two or three times a year until September 2019, when he stopped using it. He used ecstasy five to ten times between June 2010 to January 2019. He used ketamine once or twice a year between May 2016 and January 2018.

In January 2018, Applicant made an appointment with his primary care physician because of his difficulty in dealing with anxiety, depression, attention deficit hyperactivity disorder (ADHD), and difficulty sleeping. He received a prescription for Adderall. His primary care physician suggested that he see a psychiatrist. He met with a psychiatrist in February 2018, and he informed the psychiatrist of his struggle with anxiety, depression, and ADHD. The psychiatrist put him on a prescription regimen for Lexapro and stopped the prescription for Adderall. Applicant does not believe that the Lexapro was effective, possibly because the dosage was too low. (Tr. 48-50)

In July 2019, Applicant met with a psychologist for cognitive behavior therapy (CBT). Applicant testified that at this point he was "just too broken" to participate in therapy sessions. Instead, he started using cocaine two or three times a week. (Tr 54)

Applicant received a written warning from his employer in September 2019 for tardiness, erratic work hours, and unusual behavior. He admitted during a meeting with his supervisors that he had consumed alcohol during his lunch hour on September 19, 2019, and had done so on several previous occasions. Within a few days after he received the written warning, he failed a urinalysis test for marijuana and cocaine. He then took a leave of absence for inpatient and outpatient treatment for drug abuse. He was treated at a detoxification and recovery services facility from October 5 to October 21, 2019, and he completed the treatment program. He was diagnosed with an alcohol use disorder. He was transferred to another facility for outpatient counseling and treatment until November 15, 2019, when he completed this program and returned to work. (GX 1 at 34-44; GX 3)

Applicant sought and received individual therapy from October 2019 to March 2021. He enrolled in group therapy from September 2021 to November 2022, followed by individual therapy. (Answer at § 1.3.2.2.2.1) He has been receiving psychotherapy under the care of a licensed psychologist since July 2023 for polysubstance use and anxiety symptomatology. The psychologist believes that his cocaine and cannabis use is in sustained remission, and his alcohol use is continued but controlled. (GX 3, attachments to interrogatories) He has met with a psychiatrist regularly from June 2021 to the present. (Answer at AX A § 1.3.2.2.14 and AX B at § 1.3.2.2.1.20) As of the date of the hearing, he had not used marijuana, cocaine, ecstasy, or ketamine for about five years. (AX B at 2)

Applicant began attending three Alcoholics Anonymous (AA) meetings per week while he was in the group therapy program. He continued his AA participation until the meetings were cancelled in March 2020 due to COVID-19. (Tr. 60) He tried virtual meetings but found that they were less effective, and his alcohol consumption increased. In April 2020, he was consuming between three to four drinks per session, one to three

times and week. (Tr. 61) From August 2020 to February 2021, he was drinking two to four times per week and consuming one to five drinks per occasion. (Tr. 63)

In March 2021, Applicant's anxiety level started to increase as the pace of his work increased. By May 2021, he was drinking about five times a week and consuming four or five drinks per occasion. In June 2021, he met with a psychiatrist that he was continuing to see as of the date of the hearing. He told the psychiatrist that he had not been prescribed any medication for his ADHD since October 2019 and that his stress level was increasing. The psychiatrist renewed his Adderall prescription. By August 2021, his drinking had decreased to one or two times a week, consuming two to four drinks per session. (Tr. 69) By the time of his interview with a security investigator in November 2021, he was drinking one or two times a week, consuming three drinks per session. (Tr. 70) He testified that his current pattern is to drink one to three times a week, consuming one to three drinks per occasion. (Tr. 86)

In November 2022, Applicant began individual psychotherapy and formed a good relationship with a psychotherapist. When this psychotherapist moved to another state, he continued with a second psychotherapist, and his alcohol consumption during August 2023 to February 2024 was reduced to drinking two or three times a week and consuming one to four drinks per occasion. At this point, Applicant believed his anxiety was under control. (Tr. 73-74)

Applicant's supervisor during 2018 through 2023, who has known him since 2015, testified that Applicant's performance for most of his career was excellent until about September 2019, when his performance declined. After Applicant returned from medical leave in November 2019, he looked better and healthier, and his performance returned to his previous level. He believes that Applicant is now a trustworthy person and can be trusted to safeguard classified information. (Tr. 21-24)

A long-time friend of Applicant who is employed by another defense contractor testified that he noticed that Applicant's demeanor began to change in the mid to late 20s, when he became more withdrawn and cynical. He testified that Applicant's demeanor has now returned to being more responsible, accountable, and able to function on a day-to-day basis. He believes that Applicant has returned to being a trustworthy person with the ability to safeguard classified information. (Tr.29-34)

Before Applicant received the letter of warning in September 2019, he was consistently recognized for outstanding performance. (AX C at 8-10.) Since his return to duty, he has resumed his exceptional performance. His most recent achievement award was on September 9, 2024. (AX C at 1-7)

Applicant testified that he still associates with friends that he has known for over 15 years who continue to use illegal drugs. He understands that associating with drug-using friends is an issue, but that it is difficult to "cast them aside" because of their long-term friendship and support. (Tr. 115)

On October 6, 2024, Applicant signed a 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. (AX D at 1-8)

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 H, Drug Involvement and Substance Misuse

The SOR alleges that Applicant used marijuana with varying frequency from about April 2007 to September 2019 (SOR ¶ 1.a); used cocaine with varying frequency from about October 2009 to October 2019 (SOR 1.b); used ecstasy with varying frequency from about June 2010 to January 2017 (SOR ¶ 1.d); used ketamine with varying frequency from about May 2016 to January 2018 (SOR ¶ 1.e); and that he used all these drugs while having access to classified information. It also alleges that he tested positive of marijuana in September 2019 (SOR ¶ 1.c). Applicant’s admissions and the evidence submitted at the hearing establish SOR ¶¶ 1.a-1.e.

¶

The concern under this guideline 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.

Applicant’s admissions and the evidence submitted at the hearing, including his diagnosis and treatment for polysubstance abuse, establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(d): diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance abuse disorder.

The following mitigating conditions are potentially applicable:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 26(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.

AG ¶ 26(a) is established. Applicant's last use of illegal drugs was in October 2019, and it is mitigated by the passage of time without recurrence.

AG ¶¶ 26(b) is not fully established. Although Applicant has provided a statement of intent to abstain from drug involvement, he has not changed the environment where he used drugs, which was in the privacy of his home or temporary residence, and he continues to associate with drug-using friends.

Guideline G, Alcohol Consumption

The SOR alleges that Applicant has consumed alcohol, at times in excess and to the point of intoxication (SOR ¶ 2.a); that he admitted consuming alcoholic beverages during his lunch hour in September 2019 (SOR ¶ 2.b); that he was diagnosed with alcohol use disorder in October 2019 (SOR ¶ 2.c); and that he continues to consume alcohol two to four times per week. (SOR ¶ 2.d). All the allegations are established by Applicant's admissions and the evidence submitted at the hearing.

The 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."

The evidence establishes the following disqualifying conditions:

AG ¶ 22(b): alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

AG ¶ 22(c): habitual or binge² 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;

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;

² The National Institute on Alcohol Abuse and Alcoholism defines "binge drinking" as "a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 percent or above," which typically occurs when a man has five or more drinks or a woman has four or more drinks within a two-hour period. Centers for Disease Control and Prevention, *Fact Sheets – Binge Drinking*, www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm.

AG ¶ 23(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

AG ¶ 23(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.

AG ¶ 23(a) is established. Applicant has a long history of excessive drinking. After his psychiatrist renewed his Adderall prescription for his ADHD and he obtained counseling from the psychiatrist and a psychotherapist, he reduced his drinking to one or two times a week, consuming one to three drinks per occasion.

AG ¶ 23(c) is established. Applicant is receiving counseling and treatment and has significantly reduced his alcohol consumption.

AG ¶ 23(d) is partially established. Applicant has not completed a treatment program, but sufficient time has passed to demonstrate a clear and established pattern of modified consumption.

Guideline E, Personal Conduct

SOR ¶ 3.a cross-alleges the conduct alleged under Guidelines H and G as personal conduct. SOR ¶ 3.b alleges that Applicant falsified his SCA on May 5, 2015, by failing to disclose the conduct alleged in SOR ¶¶ 1.a, 1.b, and 1.d.

The security concern under this guideline 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. . . .

At the hearing, Applicant admitted that he falsified his SCA. He testified that he was young and naïve and that he did not understand the seriousness of falsifying an SCA. He testified that he had just started his “dream job” a month earlier and he was afraid that he would lose the job if he was unable to obtain a security clearance. (Tr. 89)

The following disqualifying conditions are established by Applicant's admissions and the evidence submitted at the hearing:

AG ¶16(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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . :engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(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;

AG ¶ 17(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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

AG ¶ 17(a) is not established. Applicant made no effort to correct his falsification of his 2015 SCA until he was confronted with it during the current adjudicatory process.

AG ¶ 17(c) is established for Applicant's falsification of his SCA. Applicant was candid in his 2021 SCA and during the adjudicatory process following the more recent SCA. He was candid at the hearing. I conclude that his falsification of the 2015 SCA is mitigated by the passage of time.

AG ¶¶ 17(c) and 17(e) are established for the reasons set out in the above discussion of Guidelines H and G.

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 H, G, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered his long service as an employee of a defense contractor while holding a security clearance. He was candid, sincere, and credible at the hearing. After weighing the disqualifying and mitigating conditions under Guidelines H, G, and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his drug involvement, his alcohol consumption, and personal conduct.

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge