



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



In the matter of:)
)
) ISCR Case No. 23-00794
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines G (alcohol consumption) and I (psychological conditions). Eligibility for access to classified information is denied.

Statement of the Case

On August 23, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and I. Applicant responded to the SOR on September 26, 2023, and requested a decision based on the written record in lieu of a hearing. On October 25, 2023, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on May 2, 2024. The hearing convened as scheduled on June 6, 2024.

Evidentiary and Procedural Rulings

Evidence

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection.

Department Counsel requested that I take administrative notice of certain provisions of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). Without objection, I have taken administrative notice of the DSM-5 in general and specifically as requested. (Hearing Exhibit (HE) I)

Amendment to SOR

Without objection, Department Counsel amended SOR ¶ 1.a to change the date of a psychological evaluation from January 23, 2023, to December 16, 2022.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since August 2020. He earned a bachelor's degree in 2000. He divorced in 2019. He has four children. (Transcript (Tr.) at 20-21; GE 1)

Applicant has a history of mental health issues and alcohol problems. In about mid-2018, he and his then wife were having difficulties, which coincided with the start of his alcohol problems. He was voluntarily admitted to partial hospitalization for alcohol detoxification and treatment for depression in December 2018. He was later admitted to inpatient treatment in December 2018 or January 2019. He was discharged and admitted to intensive outpatient treatment in February 2019. He was discharged from intensive outpatient treatment in March 2019. He reported during his treatment that he had been drinking heavily for the previous six months, and it was affecting his daily functioning. He stated that his drinking escalated, and he was drinking during the day and at night, and he was taking time off work. (Tr. at 22-26, 31-37, 41-42; Applicant's response to SOR; GE 1-4)

Applicant reported during his treatment that he had problems at home, he started getting paranoid, and he experienced suicidal ideations. He thought his wife might be unfaithful. He thought about killing himself. On one occasion, he retrieved a rifle to shoot himself, and on another, he had a razor or knife that he could use to cut his wrists. He stopped without injuring himself. He became angry and destroyed a treadmill with a baseball bat in front of his family. He stated that it was an old treadmill in the garage that was about to be thrown out. He had not been drinking at the time. While angry, he put his elbow through a wall. He felt that his wife's friend was interfering in his marriage, and after drinking alcohol, he threatened his wife's friend over the phone. He was arrested and charged with terroristic threats. The charge was eventually dismissed without a conviction. (Tr. at 26-31, 37-40; Applicant's response to SOR; GE 1-4)

Applicant was diagnosed during his treatment by the attending psychiatrist with major depressive disorder severe, recurrent without psychosis, and alcohol use disorder, severe. His discharge criteria in February 2019 included that he remain sober for a minimum of three weeks. A diagnosis in February or March 2019 also included generalized anxiety disorder. He was recommended upon discharge from the intensive outpatient program to maintain his sobriety and have a relapse prevention plan. (Tr. at 34, 40, 44; GE 2-4)

Applicant attended Alcoholics Anonymous (AA) meetings upon his discharge from the intensive outpatient program. He has periodically participated in AA meetings, most recently about a year before the hearing. (Tr. at 42-43, 60)

Applicant remained under the treatment of a psychiatrist after his discharge from outpatient treatment. The psychiatrist diagnosed him in April 2019 with major depressive disorder, recurrent, severe. The psychiatrist noted that Applicant had been sober for two months at the time of the evaluation. Applicant also saw a counselor until about the end of 2019 or the beginning of 2020. (Tr. at 44-46, 53-54; GE 2)

Applicant continued to receive medication prescriptions through the psychiatrist. He visited the psychiatrist again in September 2022. The psychiatrist reported that Applicant continued drinking, which was paired with symptoms of depression. The diagnosis remained major depressive disorder, recurrent, severe, with the addition of alcohol use disorder, moderate. The diagnosis also included R/O (rule out) bipolar I disorder, but the progress notes did not indicate any symptoms of mania or hypomanic activation. Recommendations included cessation of alcohol consumption, individual therapy, and exercise. There was no change in diagnosis or medications during a follow-up visit in November 2022. (Tr. at 46-49; GE 2)

Applicant was evaluated by a licensed psychologist at the DoD's request in December 2022. Applicant reported that he was sober for about three to four months following his treatment in 2018 and 2019. He noted that as of the evaluation, he was periodically engaging in unwanted and excessive alcohol consumption, followed by up to two weeks of abstinence. When he drank, it was up to a fifth of liquor in an evening. He stated that he did that for about one to four evenings and then, tired of his hangovers, he would stop for a while until he drank again. (Tr. at 49-52; GE 2, 5)

The psychologist diagnosed Applicant with alcohol use disorder, mild, with the following diagnostic impression:

While his drinking does not appear to impact his occupational performance, he readily reports ongoing binge consumption of alcohol. He only recently has resumed care with his psychiatrist to address his drinking habits and ongoing symptoms of depression and anxiety that, historically, have been attributable to his drinking patterns. (GE 2)

The psychologist noted:

[Applicant] showed candor in this evaluation and the consistency of his self-report with information from records and other sources is noted. Furthermore, his immediate supervisor did not voice any concerns regarding his occupational performance or reliability for the past three years. However, he reported continued binge drinking that remains a security concern relative to judgment, impulse control, reliability, and trustworthiness. Moreover, he has failed to follow treatment advice once he was diagnosed with an alcohol use disorder and continues to do so in his current treatment with Dr. [Psychiatrist]. (GE 2)

The psychologist reported that Applicant's prognosis was guarded because Applicant "reports an insufficient period in which he has abstained from alcohol or, at least, consumed alcohol in a moderate manner without binge drinking." (GE 2)

Applicant admitted that his counselors and treatment providers recommended that he not drink. He has been unable to completely stop drinking. He testified that he last drank about two months before the hearing. He admitted that when he drinks, it is at home and alone, he drinks heavily, and always to the point of intoxication. He stated that he would drink for a few days in a row and then stop for a few months. He estimated that his longest period of sobriety since 2018 was about three or four months. He has taken leave occasionally while hungover, but he does not drink at work, and it does not appear to have adversely affected his job performance. He admitted he is an alcoholic, and sobriety is his ultimate goal. (Tr. at 54-63) He emphasized during his testimony:

Just that the drinking doesn't affect my work. It doesn't -- I strive to not drink all the time. Sometimes I go throughout the day without thinking about it at all. Sometimes I'm tempted to drink, and sometimes I succumb to that temptation. (Tr. at 61)

Applicant called a witness, and he submitted documents and letters attesting to his excellent job performance and strong moral character. The witness praised him for his skill, expertise, productivity, and professionalism. The witness testified that any problems Applicant had with alcohol never "followed [him] to work." (Tr. at 64-65; Applicant's response to SOR; AE A, C-E)

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)

The DSM-5 is the standard classification of mental disorders used by mental health professionals in the United States. The following is summarized from the DSM-5:

Alcohol Use Disorder

Alcohol use disorder is defined as a problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by at least 2 of the following 11 symptoms occurring within a 12-month period.

1. Alcohol is often taken in larger amounts or over a longer period than was intended.
2. There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
3. A great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects.
4. Craving, or a strong desire or urge to use alcohol.
5. Recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol.
7. Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
8. Recurrent alcohol use in situations in which it is physically hazardous.
9. Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol.
10. Tolerance, as defined by either of the following:
 - a. A need for markedly increased amounts of alcohol to achieve intoxication or desired effect.
 - b. A markedly diminished effect with continued use of the same amount of alcohol.
11. Withdrawal, as manifested by either of the following:
 - a. The characteristic withdrawal syndrome for alcohol (refer to Criteria A and B of the criteria set for alcohol withdrawal, pp. 499-500).

- b. Alcohol (or a closely related substance, such as a benzodiazepine) is taken to relieve or avoid withdrawal symptoms.

The presence of two to three symptoms is classified as minor. The presence of four to five symptoms is classified as moderate. The presence of six or more symptoms is classified as severe.

Major Depressive Disorder

The criterion symptoms for major depressive disorder must be present nearly every day to be considered present, with the exception of weight change and suicidal ideation. Fatigue and sleep disturbance are present in a high proportion of cases; psychomotor disturbances are much less common but are indicative of greater overall severity, as is the presence of delusional or near-delusional guilt.

The essential feature of a major depressive episode is a period of at least two weeks during which there is either depressed mood or the loss of interest or pleasure in nearly all activities. Many individuals report or exhibit increased irritability (e.g., persistent anger, a tendency to respond to events with angry outbursts or blaming others, an exaggerated sense of frustration over minor events).

Generalized Anxiety Disorder

The key feature of generalized anxiety disorders is persistent and excessive anxiety and worry about various domains, including work and school performance, that the individual finds difficult to control.

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:

(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;

(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.

The SOR alleged psychological conditions security concerns under Guideline I, and cross-alleged those concerns under Guideline G. The SOR alleged behavioral issues under Guideline I, but it never alleged that they were alcohol related. I find that AG ¶ 22(a) was never alleged and therefore cannot be applicable.

Applicant is a binge drinker who drinks heavily for a few days in a row and then stops for a period. He was diagnosed with alcohol use disorder by several medical professionals. His counselors and treatment providers recommended that he not drink, but he has been unable to stop for more than a few months. AG ¶¶ 22(c), 22(d), 22(e), and 22(f) are applicable.

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's drinking pattern is little changed over the last six years. He drinks heavily for a few days, then stays sober for a few months. He is an admitted alcoholic who strives for sobriety, but he has thus far been unable to remain abstinent. He is urged to continue the fight. However, I have lingering concerns about his drinking. 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.” The above mitigating conditions are not applicable.

Guideline I, Psychological Conditions

The security concern for psychological conditions 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.

AG ¶ 28 provides conditions that could raise psychological conditions security concerns. The following are potentially applicable:

(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;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

AG ¶ 28(a)

SOR ¶ 1.b alleges Applicant’s suicidal ideations, violent outburst resulting in the destruction of a treadmill, and arrest for terroristic threats. Those incidents constitute behavior that casts doubt on Applicant’s judgment and stability and may indicate an emotional, mental, or personality condition. AG ¶ 28(a) is applicable to that behavior. See USAF-M Case No. 23-00056-R at 3 (App. Bd. Aug. 31, 2024) for a discussion

about how conduct that could be alleged under another guideline can also be used to establish AG ¶ 28(a).

AG ¶ 28(b)

AG ¶ 28(b) requires 1) an opinion by a duly qualified mental health professional that the individual has a condition; and 2) that the condition may impair judgment, stability, reliability, or trustworthiness. Some conditions, such as psychotic disorder, schizophrenia, schizoaffective disorder, delusional disorder, bipolar mood disorder, borderline personality disorder, and antisocial personality disorder (none present in this case), clearly impair judgment, stability, reliability, and trustworthiness, and by their very nature raise security concerns, and can be accepted as such without further elaboration by the mental health professional: Other conditions may require elaboration by the mental health professional as to how the condition may impair the individual's judgment, stability, reliability, or trustworthiness.

The SOR alleges that Applicant was diagnosed at various times with alcohol use disorder, severe (SOR ¶ 1.b), moderate (SOR ¶ 1.c), and mild (SOR ¶ 1.a). Alcohol use disorder is a condition may impair judgment, stability, reliability, or trustworthiness. AG ¶ 28(b) is applicable to that diagnosis.

Applicant was diagnosed with major depressive disorder (SOR ¶¶ 1.b and 1.c) and generalized anxiety disorder (SOR ¶ 1.b). Major depressive disorder and generalized anxiety disorder are not conditions that by their very nature clearly impair judgment, stability, reliability, and trustworthiness. See, e.g., ISCR Case No. 23-00706 at 6 (App. Bd. Jul. 16, 2024) for major depressive disorder, and USAF-M Case No. 23-00056-R at 3 (App. Bd. Jan. 4, 2024) for generalized anxiety disorder. Additionally, the psychologist who evaluated Applicant at the DoD's request did not diagnose those conditions. AG ¶ 28(b) is not applicable to those diagnoses.

In addition to alcohol use disorder and major depressive disorder, SOR ¶ 1.c alleges that Applicant's treating psychiatrist diagnosed him "with a rule-out diagnosis of Bipolar I Disorder." A "rule-out diagnosis" is not a diagnosis. It is a medical term that means a doctor is trying to eliminate a possible diagnosis from a list of conditions for a patient. The language in SOR ¶¶ 1.b and 1.c referring to major depressive disorder, generalized anxiety disorder, and bipolar I disorder is concluded for Applicant.

AG ¶ 28(c)

Applicant was an inpatient for a mental health condition (SOR ¶ 1.b). AG ¶ 28(c) is applicable.

AG ¶ 28(d)

Applicant continued to consume alcohol contrary to the medical advice of his providers that he maintain sobriety (SOR ¶¶ 1.c and 1.d). AG ¶ 28(d) is applicable.

AG ¶ 29 provides conditions that could mitigate psychological conditions security concerns. The following are potentially applicable:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (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;
- (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;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

I believe this is primarily an alcohol case, but there is problematic behavior that may not have involved alcohol. This is also a psychological conditions case. Applicant's alcohol and mental health issues are intertwined. At this time, his alcohol issues are unresolved, as are his mental health issues. None of the mitigating conditions, individually or collectively, are sufficient to mitigate the psychological conditions security concerns.

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 and I in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines G and I.

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 I:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant, except for the language "Major Depressive Disorder severe, recurrent, without psychosis, and Generalized Anxiety Disorder," which is found For Applicant
Subparagraph 1.c:	Against Applicant, except for the language "Major Depressive Disorder recurrent, severe" and "with a rule-out diagnosis of Bipolar I Disorder," which is found For Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline G:	Against Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge