



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-02514
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

11/25/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 24, 2023. On December 28, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J, H, G and E. 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 January 3, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 30, 2024, and the case was assigned to me on September 26, 2024. On October 7, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled October 24, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. DOHA received the transcript (Tr.) on November 1, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.c, 2.a through 2.d, and 3.a. He admitted SOR ¶¶ 3.a and 4.a in part. He denied the allegation in 1.b and attached documentary evidence to support his denial. His admissions are incorporated in my findings of fact.

Applicant is a 27-year-old help-desk technician employed by a defense contractor since February 2023. He attended a community college but did not receive a degree. He has lived with his fiancée since August 2021 and has a two-year-old son. He has never held a security clearance.

Applicant testified that he was raised properly in a good home, with good morals and good standards until his parents divorced when he was about 12 years old. A year later his grandmother, who was a "second mother" and lived with him, passed away. Applicant was an "aspiring soccer player" until he suffered a serious knee injury that ended his ability to play soccer. He did not know how to deal with his emotions, and he resorted to drugs and alcohol to cope with them. (Tr. 17-19)

In January 2016, Applicant was charged with possession of marijuana by a minor, possession of alcohol by a minor, and possession of a false operator's license. (GX 3 at 13) The charge of possession of a false operator's license was *nolle prosequi*. (GX 3 at 11) He was convicted of possession of alcohol and placed on probation. After he completed the probation, the charge was dismissed. (GX 2 at 13; GX 3 at 15) This charge was alleged in SOR ¶ 1.a.

In May 2019, Applicant was charged with driving while intoxicated (DWI) and failure to stop at an accident. After having a disagreement with his father, he went to a strip club and began drinking. He testified that he did not remember how much he drank and did not remember getting into his car. (Tr. 25-26) He hit a barrier wall while driving about 60 miles per hour and woke up in a hospital. (GX 2 at 10) His blood-alcohol content (BAC) was .19. (Tr. 27) The charge of failure to stop at an accident was *nolle prosequi*. (GX 3 at 3) He was convicted of reckless driving and sentenced to 60 days in jail, suspended, and placed on probation for 12 months. In March 2020, he failed a breathalyzer examination by testing positive for alcohol. He was charged with non-compliance with the terms of his probation and sentenced to jail for 60 days, with 30 days suspended. (GX 3 at 1-2, 5) He appealed, and the appellate court found that he was in

compliance with his probation and dismissed the case on May 6, 2022. (Attachment to SOR answer) These events were alleged in SOR ¶ 1.b, which was amended at the hearing to delete the last sentence, which stated, “As of May 2023, the appeal was still pending.”

In March 2020, Applicant was charged with DWI and driving under a revocation or suspension of his driver’s license. He testified that he began drinking after a “rough day” at work, was involved in an accident, and spent the night in jail. (Tr. 29-30) The driver’s license charge was *nolle prosequi*. (GX 3 at 7) He was convicted of DWI and sentenced to 120 days in jail, suspended, and placed on supervised probation for 12 months. (GX 3 at 9) He was diagnosed with alcohol use disorder and attended court-ordered counseling for 26 or 32 weeks. (Tr. 35; GX 2 at 16) (Applicant could not remember the exact duration of the counseling.) These events were alleged in SOR ¶ 1.c.

SOR ¶ 2.a through 2.d allege that Applicant purchased and used marijuana on various occasions between at least June 2013 and August 2022; that he used cocaine on various occasions between at least December 2015 and May 2021; that he used mushrooms in June 2017; and that he used LSD in September 2018. Applicant admitted all the allegations. When he responded to DOHA interrogatories in December 2023, he disclosed that he purchased and used marijuana two to three times a week from June 2013 to August 2022, purchased and used cocaine two or three times per month in September and October 2018 and occasionally used it from November 2018 to May 2021. He used mushrooms once in June 2017 and used LSD one time in September 2018. (GX 2 at 22-23) He no longer uses illegal drugs and no longer associates with drug users. (Tr. 52-53)

Applicant testified that after his second DWI, he enrolled in classes recommended by the court, and he found “tremendous support” from one of the counselors. The counselor taught him how to handle his emotions, how to express them in a positive manner, and how to improve his decision-making skills. The counselor encouraged him to find a support base consisting of people he could talk to. (Tr. 20-21; Answer to SOR)

In August 2021, Applicant began living with his fiancée, who supports him “day in and day out,” and they now have a two-year-old son. He testified that he gradually reduced his alcohol consumption after his last DWI, and he stopped consuming alcohol in February 2024. (Tr. 42) He attends Alcoholics Anonymous (AA) meetings occasionally. He last attended an AA meeting in March 2024. (Tr. 43) He kept the pamphlets and workbooks from his previous his alcohol counseling. When he feels the urge to drink alcohol, he calls his fiancée. If he cannot reach his fiancée, he calls his father or his mother. (Tr. 44-45) When he attends social events where alcohol is being served and consumed, he drinks water. (Tr. 55)

Applicant’s supervisors and colleagues submitted letters attesting to his trustworthiness, integrity, teamwork, interpersonal skills. His application is strongly supported by his employer’s corporate chief of staff, security officer, assistant security

officer, a personal security specialist, two supervisors, and two colleagues. (AX A through H)

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 J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." Applicant's admissions and the evidence submitted at the hearing establish the disqualifying condition in AG ¶ 31(b):

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Both mitigating conditions are established. Applicant's last alcohol-related criminal conduct was in March 2020, and his last illegal drug use was in August 2022. He reached a turning point during court-ordered alcohol counseling in June 2021, when a counselor taught him how to control his emotions and improve his decision-making skills. He is in a

serious relationship with his fiancée and is enthusiastic about his fatherhood. He has thrived in his current job and has earned the respect of colleagues, supervisors, and security personnel.

Guideline H (Drug Involvement and Substance Misuse)

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 establish the following disqualifying conditions under this guideline:

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

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

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;

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 drug use was in August 2022, more than two years ago. His change of attitude and improved decision-making processes that occurred during his alcohol counseling also carried over to his illegal drug use. He has matured and become a productive and respected employee of a defense contractor. He is involved in a committed relationship with his fiancée and is the proud father of a two-year-old son.

AG ¶ 26(b) is partially established. Applicant has acknowledged his drug involvement, abstained for more than two years, and no longer associates with drug users. However, he has not provided the statement of intent set out in AG ¶ 26(b)(3).

Guideline G, Alcohol Consumption

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."

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.

Both mitigating conditions are established. Applicant's last alcohol-related incident was in March 2020, more than four years ago. He has acknowledged his maladaptive alcohol use. He completed court-ordered counseling and benefitted substantially from it. He gradually reduced his alcohol consumption after his second DUI and has abstained from alcohol since February 2024.

Guideline E, Personal Conduct

The allegations in SOR ¶¶ 1.a through 1.c, 2.a through 2.d, and 3.a are cross-alleged under this guideline. 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. . . .

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; 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.

Neither disqualifying condition is established. The evidence considered as a whole, including the mitigating evidence, does not support an assessment that Applicant may not properly safeguard classified or sensitive information. Applicant has overcome his drug and alcohol problems, has openly disclosed them, has gained a reputation as a talented and trusted employee, and is not vulnerable to exploitation, manipulation, or duress.

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 J, H, G and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, remorseful, and credible at the hearing. The strong endorsements from colleagues as well as senior officials at his place of employment were persuasive. His employer has requested that adjudication of his SCA be expedited so that he can fully utilize Applicant's skills. After weighing the disqualifying and mitigating conditions under Guidelines J, 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 criminal conduct, drug involvement, alcohol consumption, and personal conduct.

Formal Findings

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

Paragraph 1, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline H (Drug Involvement):	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant
Paragraph 3, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraphs 3.a and 3.b:	For Applicant
Paragraph 4, Guideline E (Personal Conduct):	FOR APPLICANT

Subparagraph 4.a:

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