



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



In the matter of:)
)
) ISCR Case No. 24-00324
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

10/01/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption). Applicant did not provide sufficient evidence to mitigate the Guideline H or Guideline G security concern. The security concerns, that are cross-alleged under Guideline E (Personal Conduct) are resolved for Applicant since they are largely duplicative. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 3, 2023. On March 26, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, G, and E. The DoD acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant answered the SOR and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 7, 2024. On May 8, 2024, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 10, 2024, and did not respond. The case was assigned to me on September 4, 2024.

The SOR and the Answer (FORM Item 1) are the pleadings in the case. FORM Item 2, the SCA; FORM Item 3, Government interrogatories completed by Applicant on March 12, 2024; and FORM Item 4, his FBI identification record, are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations outlined in SOR ¶¶ 1.a through 1.i and SOR ¶¶ 2.a through 2.e, and he denied SOR ¶ 3.a, on the basis that it was merely a cross-allegation of security concerns alleged under other guidelines. (Answer.) His admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is a 34-year-old systems engineer for a defense contractor. He has worked for his current employer since February 2023. He is seeking his first security clearance. He married in 2020 and has no children. He earned his bachelor's degree in 2012. He attended law school from 2012 to 2014 but did not graduate. He is presently working on his master's degree. (Item 2.)

Guideline H

Applicant admits the use of six different drugs between 2004 and September 2022, illegal use of controlled substances, that he purchased marijuana, self-medicated on various occasions, and that he received inpatient treatment for "alcoholism and drug use" for 30 days in 2015. (Guideline H - SOR ¶¶ 1.a through 1.i). After his inpatient treatment Applicant admitted he continued using marijuana, used cocaine on various occasions in 2019, and in 2021 took Vicodin, which he was not prescribed. Prior to entering inpatient treatment, Applicant had used marijuana since 2004, used Ritalin that he was not prescribed on various occasions between at least approximately 2008 and 2015, used MDMA/Ecstasy on various occasions between April 2010 and June 2012, and used Xanax that was not prescribed to him on various occasions between 2010 and 2014. Between August 2012 to December 2014, he suffered with severe depression and social anxiety and self-medicated with marijuana, prescription stimulants, and alcohol. This period coincided with the timeframe when he failed out of law school. The inpatient treatment was primarily focused on his alcohol problem. (Item 3 at 8.) He stopped using marijuana in fall 2022 because he was looking for a job. When he started with his new company, he was required to submit to a drug test, and he tested negative. (Answer; Item 2; Item 3.)

Guideline G

Applicant admits that in October 2014, he was charged with Driving Under the Influence and Excess Blood or Refusal to Test and subsequently convicted of Drunk Driving and Excess Blood or Refusal to Test. He was sentenced to six days in jail and five years of probation, SOR ¶ 2.a. (Item 2, Item 3, Item 4.) In April 2015 he admits he attended a 30-day inpatient treatment program for his alcohol and drug abuse. He was diagnosed with an Alcohol Use Disorder and advised to quit drinking, SOR ¶ 2.b. (Item 3 at 19.) After leaving the treatment program He admits that, after leaving the treatment program, he consumed alcohol at various times, including between August 2016 to October 2016, August 2020 to September 2020, and in February 2022. These episodes of alcohol use were not in accordance with the treatment advice he received at the inpatient program. (SOR ¶¶ 2.c-2.e) (Item 3 at 19.)

After leaving the inpatient treatment facility in May 2015 he attended Alcoholic Anonymous (AA) meetings until 2018. He had a period in August 2016 to October 2016 when he resumed drinking, which cost him an eight-year relationship. In 2020 he started drinking without his wife's knowledge. This caused an argument with his wife, and he stopped. In explaining his abstinence from alcohol during this period, he cited several factors, including getting his life on track, succeeding in his career, and pursuing his master's degree. (Item 2, Item 3.) "I was not being honest with my wife about my drinking, and I chose to stop before drinking ruined my life again." (Item 2 at 59.) In response to Government interrogatories, he admitted that he drank hard liquor, probably vodka, on February 20th, 2022. (Item 3 at 17.)

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*, 484 U.S. at 531. “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. See 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*, 484 U.S. at 531.

Analysis

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 record establish the following disqualifying conditions under this guideline, as detailed in AG ¶ 25:

- (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;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder; and
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional.

Applicant admitted using at least six different controlled substances from 2004 until September 2022 (SOR ¶¶ 1.a, 1.c-1e, 1.h-1.i.) and to purchasing marijuana. He admitted self-medicating with marijuana and prescription stimulants and inpatient treatment for drug use. AG ¶¶ 25(a) and 25(b) apply. SOR ¶ 1.g does not allege nor is there is any evidence Applicant failed to successfully complete a drug treatment program or that there was a diagnosis by a duly qualified medical provider. AG ¶¶ 25(d) and 25(e) do not apply.

The following mitigating conditions are potentially applicable as detailed in 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
- (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 not established. Applicant's drug misuse was frequent, longstanding and recent, and did not occur under circumstances unlikely to recur. He used marijuana from 2004 until September 2022, and purchased marijuana until at least November 2022. He misused prescription drugs Ritalin or Xanax from 2008 to 2015, and

Vicodin/Hydrocodone on several occasions in 2021. He also used MDMA/Ecstasy in the past, and used cocaine on various occasions between at least September to November 2019. His drug misuse casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not established. Applicant admitted to his drug use and sought treatment in conjunction with treatment for his alcoholism but continued to use drugs to self-medicate for depression. While he has abstained from drug misuse for about two years and appears to have gotten his life on track, insufficient time has passed to mitigate his lengthy history of substance abuse. The security concern regarding his drug involvement is not mitigated.

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is detailed 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 record establish the following disqualifying conditions under this guideline, as detailed in 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;

(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.

Applicant admits he is an alcoholic. He had one alcohol related arrest in 2014. and he was advised to stop drinking after his 2015 inpatient treatment, which he has not done. AG ¶ 22(a), AG ¶ 22(d), AG ¶ 22(e), and AG ¶ 22(f) apply.

The following mitigating conditions detailed in AG ¶ 23 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;

(c) the individual is participating in counseling or a treatment program, has no history of treatment and relapse, and is making satisfactory progress in a treatment program; 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.

The record shows Applicant has not had an alcohol-related event involving law enforcement since 2014. AG ¶ 23(a) applies to SOR ¶ 2.a. Applicant acknowledges he is an alcoholic. His inpatient treatment did not deter him from continuing to drink. The impact on his personal life did not deter him from drinking. AG ¶ 23(a) is partially established for SOR ¶¶ 2.c-2.e. Although his subsequent alcohol consumption may not comply with treatment recommendations there is evidence, he has limited consumption of alcohol to three relatively short periods in 2016, 2020, and 2022. While he declared his intent to refrain from alcohol abuse, his alcohol issues are too recent and too serious to be considered mitigated. AG ¶ 23(b) is only partially established.

AG ¶¶ 23(c) and 23(d) are partially established. Applicant's alcohol-related arrest occurred ten years ago, and he has not had another alcohol-related event involving law enforcement. However, since he completed a comprehensive substance abuse treatment program, he has failed to demonstrate a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations and has consumed alcohol as recently as February 2022. Applicant did not provide sufficient evidence to mitigate alcohol consumption security concerns.

Guideline E, Personal Conduct

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

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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(c) is not applicable. There is credible adverse information in several adjudicative issue areas that sufficiently establishes an adverse determination under Guidelines H and G. While Applicant's conduct shows poor judgment, impulse control, and failure to comply with rules and regulations, Guideline E security concerns are resolved for Applicant since the Guideline E security concerns are established and unmitigated under other guidelines.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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). Applicant has made significant strides in overcoming his drug and alcohol issues, which is reflected by the absence of recent law enforcement incidents, pursuit of a master's degree, and getting married. However, insufficient time has passed since his last use of drugs and alcohol. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines G, H, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct.

Formal Findings

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

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.f and 1.h-1.i:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2: Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.e:	Against Applicant
Paragraph 3: Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

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

Charles C. Hale
Administrative Judge