



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01214
)	
Applicant for Security Clearance)	

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 11, 2022. On December 11, 2023, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G, H, and E. The DCSA 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 5, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 3, 2024, and

the case was assigned to me on October 8, 2024. On October 17, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on November 6, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 11 were admitted in evidence without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until November 18, 2024, to enable the parties to submit additional evidence. Department Counsel submitted GX 12, and Applicant submitted AX D, and both were admitted without objection. Department Counsel submitted a post-hearing memorandum containing additional argument, and it is attached to the record as a hearing exhibit. DOHA received the transcript (Tr.) on November 20, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.d, 1.f, 2.a-2.c, and 2.e. He denied the allegations in SOR ¶ 1.e, 2.d, and 3.a-3.d. His admissions are incorporated in my findings of fact. At the hearing, SOR ¶¶ 2.a, 2.b, and 2.c were each amended to allege that Applicant used marijuana, cocaine, and unprescribed Adderall, "while holding a sensitive position, i.e., one in which [he] held a security clearance."

Applicant is a 29-year-old computer support technician employed by a defense contractor since November 2019. He received a bachelor's degree in December 2017. He has never married and has no children.

In 2018, Applicant began to drink heavily through Christmas and New Year's Day, and he failed to go to work. Some friends who were concerned about him went to his home and found him passed out with a liquor bottle near his bed. He was taken to a hospital for detoxification. His blood-alcohol content at the hospital was 0.42. He entered an inpatient treatment program on January 7, 2018. He left the program on March 1, 2018, against medical advice, because he wanted to return to work. (Tr. 36-38) After one week of abstinence, he returned to heavy drinking. On one occasion, he drove to a casino in another state and drank heavily until the bartender told him to leave after he put his head down on the bar. (Tr. 43) While heavily intoxicated, he drove back to his home state and his mother observed him staggering from the car and into the house. (GX 5 at 8)

Applicant was admitted into a residential program on April 1, 2019. His diagnosis on admission was alcohol use disorder, severe; cannabis use disorder, severe; stimulant use disorder for amphetamine-type substances, moderate; and cocaine use disorder, moderate in early remission. (GX 5 at 10) After completing three phases of treatment in progressively less structured environments, he transitioned to outpatient treatment on October 16, 2019, where he participated in group counseling and individual counseling. On July 15, 2020, he stopped attending individual counseling and attended only group counseling. He stopped attending group counseling after a session on August 18, 2020, and did not complete the program. His medical records reflect that attempts to contact

him were unsuccessful, and he was reported to have relapsed. (GX 5 at 33-34). At the hearing, he admitted that he started drinking again in June or July 2020. (Tr. 51-52)

On December 9, 2019, Applicant submitted an SCA. He was still in outpatient treatment when he submitted it. In this SCA, he disclosed that he smoked marijuana about once a month from September 2011 to November 2018. He disclosed that he used Adderall without a prescription during college and after college until October 2018. He disclosed that he used cocaine from June to October 2018. He disclosed that he received treatment for alcohol abuse from April to October 2019. In this SCA, he stated that he no longer used alcohol or any types of drugs. (GX 1 at 44-48) He was granted eligibility for access to classified information in July 2020.

In September 2020, Applicant was arrested for being drunk in public. He was found heavily intoxicated in the parking lot of a fast-food restaurant. He had driven to the restaurant in his car, but he was found eating food in a stranger's car. He was held in custody until he was sober. While being held, he called the two officers vulgar names and attempted to head butt them. (GX 10 at 10) At the hearing, he testified that he could not remember many details about the incident because he was heavily intoxicated. (Tr. 54) He was fined \$25 plus court costs. (GX 7)

Applicant's arrest was reported to DCSA in a continuous evaluation report dated December 10, 2020. (GX 3) After receiving the continuing evaluation report on April 29, 2021, DCSA requested that he submit a new SCA. Because he did not submit a new SCA, DCSA changed Appellant's clearance status to "No Determination Made" on July 1, 2021. (GX 12).

On a date not reflected in the record, Applicant was diagnosed with attention deficit hyperactivity disorder (ADHD). Between August 2013 and August 2023, he used Adderall to control his ADHD, but he exaggerated his symptoms when he asked his doctor for a prescription. He would obtain a 30-day supply and use it within about 10 days. (Tr. 63) In March or April 2019, he used Vyvanse, another drug for ADHD, one time after a friend gave it to him. (Tr. 64)

Between July 2020 and September 2023, Applicant used cocaine 15 or 20 times. (Tr. 58) On September 4, 2023, he sent an email to his supervisor, asking for time off for personal reasons. He testified that at this time, "the clearance was the last thing on my mind," and he "just wanted to be free of drugs and alcohol." (Tr. 67) On September 5, 2023, he self-admitted into a drug and alcohol recovery program for 30 days. (GX 4) In response to DOHA interrogatories, he stated that as of September 4, 2023, he was consuming ten beers weekly and ten mixed drinks weekly. (GX 2 at 4)

On October 6, 2023, Applicant entered a long-term treatment program. His diagnosis upon admission was cocaine use disorder, moderate or severe; and alcohol use disorder, moderate or severe. (GX 6) On November 8, 2023, the chief operating officer for this facility reported that Applicant was actively engaged in his treatment, that he had made significant progress since starting treatment, and that he believed Applicant

“is a responsible and trustworthy individual who is well-prepared to continue his service to the Department of Defense.” (GX 2 at 18; AX C). Applicant successfully completed the “intensive outpatient” phase of his treatment on January 2, 2024. He successfully completed the aftercare program on May 14, 2024, and transitioned to “general outpatient programming.” He completed the treatment program on June 11, 2024. The program director stated that Applicant was an active participant in group discussions, demonstrated a positive attitude, and consistently exhibited a commitment to recovery. (AX D)

The owner of the treatment program that Applicant recently completed is a 54-year-old member of Alcoholics Anonymous (AA) who has been sober for 22 years. He and Applicant have become friends. He submitted a letter stating that Applicant “struggled mightily” to stop drinking and change his life. He believes that Applicant is “walking the walk,” of integrity and sobriety. He considers Applicant a “solid guy,” and he is very optimistic about Applicant’s future. (AX A; Tr. 18-23)

Another friend of Applicant, who has been an active member of AA since 1992, submitted a letter vouching for Applicant’s commitment to sobriety. (AX B) This friend testified that he and Applicant stay in contact at dinner and at AA meetings. This friend knows Applicant’s AA sponsor and has high regard for him. He believes that Applicant has taken his alcohol problem very seriously. (Tr. 24-26)

The SOR alleges multiple falsifications in Applicant’s December 2019 SCA. SOR ¶ 3.a alleges that he deliberately failed to disclose the full extent of his misuse of prescription drugs. In his SCA, he disclosed using Adderall from August 2013 to December 2017, but in his response to the SOR, he admitted using Adderall from August 2013 to April 2019 and from June 2020 to August 2023.

SOR ¶ 3.b alleges that Applicant failed to disclose the full extent of his treatment for misuse of drugs or controlled substances. In his SCA, he answered “No” to the question whether he had ever sought counseling or treatment as a result of his use of a drug or controlled substance. In his answer to the SOR, he stated that he received treatment from April 2019 to August 2020. When asked at the hearing why he answered “No” to the question, he responded, “That’s a great question.” (Tr. 72)

SOR ¶ 3.c alleges that Applicant failed to disclose the full extent of his alcohol abuse. In his SCA, he answered “No” to the question whether his use of alcohol had a negative effect on his work performance, his professional or personal relationships, his finances, or resulted in intervention by law enforcement or public safety personnel. His answer was inconsistent with his time off from work while in therapy, and it omitted his arrest in December 2020.

SOR ¶ 3.d alleges that Applicant failed to disclose that he was still in outpatient treatment when he submitted his SCA. In Applicant’s response to the SOR, he denied falsifying his answers, stating that he did not deliberately conceal that he was still in

outpatient treatment. At the hearing, he testified, “I’ve used so many drugs and drinks (sic) so much that I could not keep tabs on what I was doing.” (Tr. 71)

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 G, Alcohol Consumption

The security 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 submitted at the hearing establishes 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;

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; 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 not established. Applicant's excessive alcohol consumption was recent, frequent, and did not occur under unusual circumstances.

AG ¶¶ 23(b) and 23(d) are not established. Applicant has acknowledged his maladaptive alcohol use and provided evidence of actions to overcome his problems with alcohol. He entered a treatment program in April 2019, relapsed in June or July 2020, and left the program before completing it in August 2020. He relapsed a month later. He entered a mental health treatment program in October 2023, and completed it in June 2024, after he received the SOR. Insufficient time has passed to establish a pattern of modified consumption or abstinence.

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.

The evidence submitted at the hearing establishes 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;

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 use disorder;

AG ¶ 25(e): failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional; and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

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(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) is not established. Applicant's drug involvement was recent, frequent, and did not occur under unusual circumstances making it unlikely to recur.

AG ¶ 26(b) is not established. Applicant has acknowledged his drug abuse. He has made new friends and contacts through his participation in AA, but he provided no evidence that he has disassociated with previous drug-involved friends and associates. He has not provided the statement intent provided for in AG ¶ 26(b)(3).

AG ¶ 26(d) is not established. Applicant completed the most recent treatment program, but he submitted no evidence of a favorable prognosis by a duly qualified medical professional.

Guideline E, Personal Conduct

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. . . .

The following disqualifying condition is relevant to this case:

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.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant is a mature, well-educated adult. He had undergone the security-clearance process at least once before submitting an SCA in January 2022. On the other hand, he had been involved in heavy drinking and drug use and was still in a drug-treatment program when he submitted his SCA. He admitted at the hearing that he had used so many drugs and drank so much that he "could not keep tabs on what I was doing." (Tr. 71)

SOR ¶ 3.a alleges that Applicant falsified his 2019 SCA by deliberately failing to disclose his misuse of Adderall and Vyvanse, as alleged in SOR ¶¶ 2.c and 1.d. His misuse of Vyvanse was a one-time occurrence in March 2019, and it is likely and plausible that Applicant forgot to list it, not fully understanding the requirement for full disclosure. However, his misuse of Adderall was a major component in his drug abuse and not one that he would have inadvertently overlooked. This allegation is established for his failure to disclose his misuse of Adderall, but it is not established for his failure to disclose his one-time use of Vyvanse.

SOR ¶ 3.b alleges that Applicant falsified his 2019 SCA by deliberately failing to disclose the full extent of his drug treatment as alleged in SOR ¶ 1.e. The SCA asked, "Have you ever voluntarily sought counseling or treatment as a result of your use of a drug or controlled substance," and he answered "No." When asked why he said "No," he responded, "That's a great question," but he offered no explanation. This allegation is established.

SOR ¶ 3.c alleges that Applicant falsified his 2019 SCA by answering "No" to the question, "In the last seven (7) years, has your use of alcohol had a negative impact on your work performance, your professional or personal relationship, your finances, or resulted in intervention by law enforcement/public safety personnel?" At the hearing, he testified that it did not affect his work because he told his bosses about his problems, and he was still completing his work assignments. He admitted that he missed work because of heavy drinking and that his paychecks were reduced. He did not address his arrest for being drunk in public. This allegation is established.

SOR ¶ 3.d alleges that Applicant falsified his 2019 SCA by stating that he had completed his treatment, when in fact he was still in outpatient treatment. Applicant denied this allegation, stating that he had completed the plan, was attending outpatient treatment, and was participating in AA. The treatment records reflect that he disengaged from individual therapy, stopped attending group therapy before completing the program, and that attempts to contact him were unsuccessful. This allegation is established.

Applicant's multiple falsifications of his 2019 SCA are sufficient to establish the disqualifying condition in AG ¶ 16(a). While Applicant's memory may have been somewhat muddled by his abuse of alcohol and drugs, he was familiar with the questions in the SCA and the importance of candor during the security clearance process. He offered no plausible excuse for his numerous falsifications.

The following mitigating conditions are relevant:

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

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(a) is not established. Applicant did not attempt to correct his omissions until he was confronted with the evidence.

AG ¶ 17(c) is not established. Applicant's falsifications were recent, frequent, and did not occur under unique circumstances. They were not minor, because they

undermined the integrity of the adjudication of his most recent SCA. Falsification of an SCA “strikes at the heart of the security clearance process.” ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

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 G, H, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Once a concern arises regarding an Applicant’s eligibility for access to classified information, there is a strong presumption against granting eligibility. ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome that presumption. 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 alcohol consumption, drug involvement, and personal conduct.

Formal Findings

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

- | | |
|---|-------------------|
| Paragraph 1, Guideline H (Alcohol Consumption): | AGAINST APPLICANT |
| Subparagraphs 1.a-1.f: | Against Applicant |
| Paragraph 2, Guideline H (Drugs/ Substance Misuse): | AGAINST APPLICANT |
| Subparagraphs 2.a-2.e: | Against Applicant |
| Paragraph 3, Guideline E (Personal Conduct): | AGAINST APPLICANT |

Subparagraphs 3.a-3.d:

Against 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.

LeRoy F. Foreman
Administrative Judge