



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



In the matter of:)
)
) ISCR Case No. 22-02395
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/10/2025

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guidelines H (drug involvement and substance misuse), J (criminal conduct), M (use of information technology), G (alcohol consumption), and E (personal conduct). Clearance is granted.

Statement of the Case

On October 18, 2021, Applicant submitted a Questionnaire for National Security Positions (SF-86). On April 4, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, J, M, G, and E. The SOR detailed reasons why the DCSA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On June 1, 2023, Applicant provided a response to the SOR through counsel. On July 3, 2023, Department Counsel was ready to proceed. On August 3, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On August 11, 2023, DOHA issued a notice of hearing scheduling the hearing for August 28, 2023. The hearing was convened as scheduled. Department Counsel submitted Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and did not call any witnesses. He submitted Applicant Exhibits (AE) A through X, which were admitted

without objection. I held the record open until October 12, 2023, to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE Y through DD, which were admitted without objection. On September 8, 2023, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 32-year-old cyber security specialist employed by a defense contractor since May 2019. He seeks a security clearance as a condition of his continued employment as well as to enhance his position within his company. (Tr. 17-18; GE 1, AE E)

Applicant graduated from high school in June 2011. After graduating from high school, he served in the U.S. Air Force from May 2021 to July 2021; however, he did not complete basic training and was medically discharged in July 2021. After the Air Force, Applicant attended several trade schools and received numerous certifications in the cyber security field. (Tr. 19-21; AE E) Applicant has never married and has no dependents. (Tr. 20, GE 1)

I found Applicant to be credible and forthcoming during his testimony and throughout the entire security clearance process. He self-reported and amplified in detail the security concerns outlined below that would otherwise never have been known.

Drug Involvement and Substance Misuse

The most significant span of Applicant's drug involvement and substance misuse began when he was 17 years old in 2010 and continued until he was 22 years old in 2015. He did, however, have two isolated relapses in 2016 and 2018, discussed *infra*. The following summarizes that drug involvement and substance misuse. (Tr. 23-27)

(1.a) Applicant used marijuana sporadically from November 2010 to April 2021; (1.b) he sporadically sold marijuana to six individuals from June 2014 to May 2015; (1.c) he occasionally used cocaine when offered to him at parties from September 2014 to May 2015 and smoked crack cocaine one time in July 2016 when offered to him at a party; (1.d) he used methamphetamine sporadically when offered to him at parties from September 2014 to May 2015, and he smoked methamphetamine one to two times with a contractor who was repairing his home in July 2018.

(1.e) Applicant used MDMA (ecstasy) about once a month when offered to him at parties from September 2014 to May 2015; (1.f) he used prescription medication Adderall without a prescription that a friend provided to him to increase his focus while programming from September 2014 to May 2015; (1.g) he occasionally used prescription opioid Vicodin without a prescription from September 2014 to May 2015; (1.h) he took Buprenorphine without a prescription one time in June 2015.

(1.i) Applicant used hallucinogenic mushrooms one time in August 2015; he drank a bottle of cough syrup for recreational purposes one time in September 2014; (1.j) and he was charged with Possession of Drug Paraphernalia in March 2013 and found guilty. (SOR; SOR Answer; Tr. 23-26, 42-48, 66)

In the small town of 1,200 where Applicant grew up, drugs were available, and drug use was common with the individuals he associated with. His high school graduating class consisted of 32 individuals, and it was his peer group that introduced him to marijuana. Applicant lived at home until he moved to State B in 2015. His parents were unaware of his drug use during the time he lived with them. (Tr. 63-64)

When I asked Applicant what his motivation was to move away from his small town, he answered,

It was – it was not who I wanted to become, Your Honor. That was – that’s a dead-end career and we see all too often on the news how a person can become a statistic, and I felt – I felt that I wanted to fly, and I thought to myself, as young as I was, the only way out of this is out of here, and so I sought every opportunity to make that possible, including 12 hours a day at a sheet metal factory and paired with, yes some illicit activities, and I used that in tandem with each other to build a better future, which is clearly evidence over the past several years. (Tr. 64-65)

What I mean by becoming a statistic is entering the news as this young kid OD’d on the couch again. Could imagine how Mom and Dad would feel about that? That’s not who they raised me to be. Mom and Dad are still together. They’re ex-military themselves. They poured their heart and soul into my education and upbringing. I – I could never do that to them. I admit when I left home, I still had a few things to learn, and I still do today, but I do believe that I’m on a very, very bright track, especially with as dark of a world as I came out of, Your Honor. (Tr. 65-66)

Applicant no longer associates with any of the persons he used drugs with or who provided him drugs or prescription medications. In 2015, he left State A where the majority of his drug use occurred. After moving to State B where he currently resides, his regular drug use came to “an immediate halt.” (SOR Answer; Tr. 26-27, 29, 40-41) He stated he was young and his involvement with drugs was experimental. His drug use occurred at parties with random individuals or friends, and he did not use drugs by himself. (Tr. 23-27) His employer has a zero-tolerance drug policy. He began working for his company in May 2019 and he used marijuana one time in April 2021 after he began working for his company. That one marijuana use was the only time he used marijuana in four and one-half years. (Tr. 61-62)

The purchase, possession, and use of marijuana is legal in Applicant’s current residence (State B). When asked why he did not continue to use marijuana when he moved to a state where it was legal, he answered,

It was because of the individual I was at the time. I finally could see through the smoke, no pun intended, and that's not who I wanted to become. You only get one shot in life and I had spent now, like I said, several – several years at this point trying to make amends with my previous self, and I felt that would have been a stale path to go down. . . . Whether it was legal or not in where I was living. I have an IQ of 168 and a photographic memory. Things should be – I should – I should try better than that. (Tr. 41-42)

Applicant submitted a drug-screen 12-panel test, and a comprehensive clinical assessment conducted by a Licensed Addiction Counselor (LAC) with his SOR Answer. The hair sample was collected on May 1, 2023, and reported negative on May 5, 2023. (SOR Answer; AE A) The LAC did not reach a diagnosis that Applicant was a drug addict, nor did she tell him to abstain from alcohol. She further added that she did not have any drug involvement and substance misuse or alcohol consumption concerns or treatment recommendations for Applicant. (SOR Answer; AE B; Tr. 32) During his hearing, Applicant submitted a second drug-screen 12-panel test that was collected on August 4, 2023, and reported negative on August 11, 2023. (AE J) Post-hearing, Applicant submitted a third comprehensive drug screen urinalysis test that was collected on October 3, 2023, and reported negative on October 4, 2023. (AE BB)

Criminal Conduct

In July 2017, Applicant was arrested and charged with Driving Under The Influence (DUI) and Speeding (10-19 MPH over Limit). He pled guilty to the DUI and was placed on probation, the terms of which were that he had to remain alcohol and drug free for 18 months and not be involved in any other criminal activities. He satisfactorily completed the terms of his probation, paid fines, and performed community service. Applicant did not serve any time in jail. (SOR; SOR Answer; Tr.30; AE S – AE U)

Use of Information Technology

Between 2008 and 2016, Applicant illegally and infrequently downloaded needed software. He did so when a piece of software was needed in a timely manner. He no longer illegally downloads software. It was in 2016 that Applicant stopped downloading software stating, "That's when I really engaged in my IT career, and now I know eight programming languages and I'll be able to write my own software, if required." (SOR; SOR Answer; Tr. 30-31, 49-54) Applicant downloaded the software in open locations from open sources. (Tr. 60)

Alcohol Consumption

The SOR cross-alleged ¶ 4.a with ¶ 2.a (Applicant's July 2017 DUI arrest), discussed *supra*. The SOR further alleged that from February 2020 to February 2023, Applicant drove while being at least slightly drunk with varying frequency. He denied this allegation stating that this information was provided in reference to Level 2 counseling he completed after his 2017 DUI. The reference he made to his Level 2 education was related to a specific guideline that outlined the conditions under which one should operate

a vehicle after consuming a certain number of drinks in a day. It was not meant to imply that he engaged in such behavior during that timeframe. (Tr. 54-56; AE S)

On Applicant's 30th birthday in 2022, his friends took him out to celebrate, and he admits that he drank to excess and became sick. He added that this was a milestone birthday, that his friends took care of him, ensuring that even though he had a lot to drink and was ill, he was safe and did not drive or do anything foolish. Applicant does not drink to the point of blacking out. (SOR; SOR Answer; Tr. 57) Applicant described his present use of alcohol as "social," in which he goes out with friends on Friday nights to play board games and consumes "two to three beers." For "quite some time," he has not and does not drive after consuming any amount of alcohol. (Tr. 33) When he goes out with his girlfriend, he limits himself to one drink. And when he does drink, he does not drive, but rather walks home. He lives two blocks from the brewery. (Tr. 56-57)

Applicant submitted a Phosphatidylethanol (PEth) test. The PEth test is a blood test that detects recent alcohol consumption by measuring a specific alcohol biomarker, PEth, which forms in the presence of ethanol and remains in the bloodstream for up to four weeks. The analysis was performed using Liquid Chromatography with Tandem Mass Spectrometry. The sample was collected on May 31, 2023, and reported negative on June 11, 2023. (AE I)

Applicant also submitted a second PEth test with a sample collected on August 4, 2023, and reported positive abnormal on August 14, 2023. Per the testing laboratory, Peth levels in excess of 20 ng/mL are considered evidence of moderate to heavy ethanol consumption. The laboratory advised caution in interpretation and use of biomarkers alone to assess alcohol use. Results should be interpreted in the context of all available clinical and behavioral information. Applicant explained that he consumed three beers to celebrate his girlfriend's 28th birthday. The night he drank three beers to celebrate his girlfriend's birthday party was as he stated, "one extra night from what I am typically accustomed to. Yes. And the test was immediately taken afterwards." (Tr. 67-68; AE K) Post-hearing, Applicant submitted a third PEth test with a sample collected on October 3, 2023, and reported negative on October 11, 2023. (AE AA)

Personal Conduct

Under this concern, the SOR alleged primarily a number of traffic infractions that are summarized as follows.

(5.a) In December 2022, Applicant was charged and convicted of Driving too Fast for Existing Conditions; (Tr. 58) (5.b) in November 2019, he was charged and convicted of Following too Closely; (5.c) in April 2019, he was charged and convicted of Driving Defective/Unsafe Vehicle and Speeding (10-19 MPH over limit) and pled guilty to Driving Defective Vehicle; (5.d) in September 2018, he was charged and convicted of Driving too Fast for Conditions.

(5.e) In February 2017, he was charged and found not guilty of Compulsory Insurance-Owner; (5.f) in November 2016, he was charged and convicted of Failed to

Obey Traffic Control Signal; (5.g) in October 2016, he was charged and convicted of Speeding (10-19 MPH over Limit; (5.h) in May 2015, he was charged and convicted of Speeding (103 MPH in a 70 or 75 MPH Zone).

(5.i) In March 2013, he was charged and convicted of Driving after Revocation and Operating Vehicle with Suspended/Revoked Registration; (Tr. 59) (5.j) in January 2013, he was charged and convicted of Speeding (85 MPH in a 70 MPH Zone) and Failure to Carry Proof of Insurance; (5.k) in 2012, he claimed he was suicidal, he was not, in order to be discharged from Basic Training and the Air Force; (5.l) and the SOR allegations under paragraphs 1 through 4, above, were cross-alleged under this concern.

Applicant explained the number of traffic infractions he accrued was due to the fact that he is a “gearhead,” was immature, and did not know “the limitations of society.” He explained that he likes “wrenching on cars,” and “committing performance upgrades.” Instead of speeding on the highway, he takes his car to a private raceway where he is allowed to race his car. Applicant maintains a valid driver’s license and valid automobile insurance on both of his vehicles. (Tr. 33-35; AE Q) Applicant submitted a County-Approved Driver Improvement Certificate of Completion Course dated May 12, 2018. (AE H)

When Applicant enlisted in the Air Force in 2012, he was young and immature and did not realize the future he “threw away.” He stated that for the past four and one-half years he has focused on his career “trying to make amends and bridge that gap forward.” (Tr. 35-36) As a cyber security specialist, Applicant earns from \$52,000 to \$58,000 annually depending on bonuses. (Tr. 36) Post-hearing, Applicant submitted a Certificate of Course Completion for Drive Safe – Six Hour Defensive Driving Course dated October 11, 2023. (AE DD)

Character Evidence

Applicant submitted 14 reference letters in total to include a wide range of individuals such as an employer/owner, company president, incoming president, company officials, co-workers, a retired hardware/software engineer, active-duty Marine Corps gunnery sergeant, best friend, etc. The collective sense of these letters document that for the past four to five years, Applicant has done everything possible to overcome his past youthful indiscretions and has proven himself to be an outstanding, patriotic, and trustworthy individual as well as a valued employee. Each individual who submitted reference letters read the SOR and Applicant’s SOR Answer. (Tr. 36-38; AE C, AE L, AE W, AE Y) Applicant’s 2019 to 2022 employee evaluations document sustained superior performance and note that he is an employee who is a trusted, valued, and making a significant contribution. (AE D) Applicant submitted invoices documenting that he contributed to the startup of his company and 12 professional certificates of courses completed and of professional accomplishments. (Tr. 38; AE F, AE P, AE R, AE V, AE X) He also submitted photographs during his hearing and post-hearing depicting himself in personal and professional settings. (Tr. 38-39; AE G, AE CC)

Applicant's statement to the Court:

The reasons that the Court should go through and consider my adjudication for a security clearance is because of the individual that I have become today. I've clearly gone through and shown over several years dedication to performance, motivation, and overall retribution of my previous self.

I deeply regret all the previous actions and I do believe that I have current skills and abilities that could benefit the U.S. Government in a wide range of areas, from eight programming languages to familiarity with over six operating systems, every single piece of cyber hardware that could possibly exist, not to mention ideas I have that can be put on the table in a range of industries, on security camera systems to AI tracking jet skis for fallen pilots to Dart ship tracking for illegal Iranian transfers. (Tr. 39-40)

Post-hearing, Applicant submitted a Letter of Apology:

Dear America,

I am writing this letter with a deep sense of responsibility and a genuine desire to convey my sincerest apologies to you, our great nation. The trust that I hold for you and our shared values have compelled me to address a matter of utmost importance.

I am aware that my actions have inadvertently compromised the trust that binds us as a community of diverse individuals striving for a better future. My choices have unintentionally caused disruptions to the safety and well-being that we all hold dear. For this, I am truly sorry.

The values that America upholds are ones that I deeply respect and hold close to my heart. My actions have not reflected the integrity that our nation stands for, and I recognize the profound impact this has had on our collective sense of trust.

In an effort to make amends, I am steadfastly dedicating myself to living a life that aligns with goals, aspirations, and secure future that our nation represents. Through my career, personal growth, and commitment to a responsible and principled lifestyle, I hope to contribute positively to the safety and well-being of our society.

Please know that this apology is not mere words but a pledge of commitment. I understand the importance of restoring your trust and respect, and I am wholeheartedly devoted to this endeavor.

America, I believe in the strength of our shared values and the resilience of our unity. I am eager to show my actions that my dedication to the betterment of our nation is unwavering.

I trust that the evidence presented today vividly illustrates a transformation from boyhood to manhood, underscored by unwavering commitment to his work, family, and nation over the past several years.

Thank you for your understanding and for being a guiding light that inspires me to strive for a better future.

With respect and humility,
/s/ Applicant (AE Z)

Applicant submitted copies of clear titles reflecting that he is the owner of a manufactured home and two vehicles. (AE N – P) Post-hearing, Applicant submitted a DriveSafe – 6 Hour Defensive Driving Course Certificate of Completion dated October 11, 2023. (AE BB)

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 clearance 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

Drug Involvement and Substance Misuse

AG ¶ 24 describes the security concern concerning drug involvement and substance misuse:

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.

AG ¶ 25 describes conditions that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition); and
- (b) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The record establishes disqualifying conditions in AG ¶¶ 25(a) and 25(b). Consideration about the possibility of mitigating conditions is required.

AG ¶ 26 provides four potentially applicable drug involvement mitigating conditions:

(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;

(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 involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(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) can mitigate security concerns when drug offenses are not recent. There are no "bright line" rules for determining when such conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance and the 20-plus years of drug use and gave too little weight to lifestyle changes and therapy. For the recency analysis, the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) *with* ISCR

Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.”) (citation format made).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board affirmed the administrative judge's decision to revoke an applicant's security clearance after considering the judge's recency analysis, stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

See *also* ISCR Case No. 02-10454 (App. Bd. Nov. 23, 2004) (sustaining denial of security clearance for Applicant who used marijuana five times while holding a security clearance with four years between most recent marijuana use and hearing).

AG ¶ 26(a) is fully applicable. A substantial period of time has passed since Applicant's last drug use. Applicant's extensive experimentation with various drugs without developing an addiction serves as evidence that their use was a result of youthful immaturity and is now firmly in the past. Despite trying a wide range of drugs, the Applicant has exhibited the ability to abstain from them successfully. His past drug use, which encompassed multiple substances, did not lead to addiction or ongoing use. Applicant's past drug experimentation is firmly behind him, and he recognizes drug misuse is a complete waste of his life and is incompatible with the life goals he has set for himself.

AG ¶ 26(b) is partially applicable. Applicant has acknowledged his youthful behavior was reckless, unlawful, and irresponsible, and has made the commitment no to partake in those activities any longer. He has shown a clear pattern of abstinence, as evidenced by three negative drug tests. He no longer associates with those with whom he experimented with drugs and has moved to a completely different state. He has participated in counseling, and a recent psychological evaluation shows no concern about addiction. He has committed to never again use illegal drugs or prescription drugs illegally ever again. He did not provide a written promise not to use drugs in the future, and the third prong of AG ¶ 26(b)(3) is not satisfied.

AG ¶ 26(d) is fully applicable. Applicant has successfully completed a drug and alcohol program, has shown no recurrence of abuse, and recently received a favorable drug and alcohol assessment from a licensed medical professional.

AG ¶ 26(c) is not applicable under the facts of this case.

In conclusion, Applicant possessed and used a variety of drugs on multiple occasions from October 2012 to April 2021. The motivations to stop using illegal drugs are evident. He understands the adverse consequences from illegal drugs. Approval of a security clearance, potential criminal liability for possession of drugs, and adverse health, employment, and personal effects resulting from drug use are among the strong motivations for remaining drug free. His period of abstinence from drug involvement, disassociation from drug using associates and environments, demonstrated maturity and commitment to his personal and professional growth show drug misuse is unlikely to recur and his past drug involvement does not cast doubt on his current reliability, trustworthiness, or good judgment.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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.

AG ¶ 31 describes one condition that could raise a security concern and may be disqualifying in this case:

(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.

AG ¶ 31(b) applies, and will be further discussed, *infra*.

AG ¶ 32 lists conditions that could mitigate criminal conduct security concerns as follows:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense;
and

(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.

The Guideline J criminal offense, a single DUI, is mitigated under AG ¶¶ 32(a) and 32(d) for the same reasons it is mitigated under Guideline G, *infra*.

Use Of Information Technology

AG ¶ 39 articulates the security concern for use of information technology:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process, manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

AG ¶ 40 describes five conditions that could raise security concerns and may be disqualifying in this case:

- (a) unauthorized entry into any information technology system;
- (c) use of any information technology system to gain unauthorized access to another system or to a compartmented area within the same system;
- (d) downloading, storing, or transmitting classified, sensitive, proprietary, or other protected information on or to any unauthorized information technology system;
- (e) unauthorized use of any information technology system; and
- (f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized.

The record establishes the disqualifying conditions in AG ¶¶ 40(a), and 40(c) through 40(f) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 41 includes four conditions that could mitigate the security concerns arising from applicant use of information technology:

- (a) so much time has elapsed since the 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;

(b) the misuse was minor and done solely in the interest of organizational efficiency and effectiveness;

(c) the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification to appropriate personnel; and

(d) the misuse was due to improper or inadequate training or unclear instructions.

AG ¶ 41(a) is fully applicable. Applicant's illegal downloading of software occurred infrequently and is unlikely to recur. He acknowledged that this was not a recurring pattern, and he no longer engages in the practice. His isolated incidents of illegally downloading software were driven by the need for timely access to the software. AG ¶ 41(b) is fully applicable. The downloading of software was minor and done solely in the interest of organizational efficiency and effectiveness. Applicant recognized that obtaining the software through legal means would have been time-consuming and potentially would have hindered productivity. However, and as noted, he no longer engages in such activities and has demonstrated a commitment to adhering to proper procedures and protocols.

Alcohol Consumption

AG ¶ 21 describes the security concern about alcohol consumption, "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."

AG ¶ 22 provides alcohol consumption conditions that could raise a security concern and may be disqualifying in this case as follows:

(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; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The record evidence establishes AG ¶¶ 22(a) and 22(c). Additional discussion is in the mitigation section, *infra*.

AG ¶ 23 lists four conditions that could mitigate security concerns:

(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 previous 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.

Applicant was involved in one alcohol-related incident involving the police and courts in 2017, and he drank to excess and became sick on his birthday in 2022. AG ¶ 23(a) is fully applicable given the significant time that has passed since Applicant's Level 2 counseling in 2017, that such conduct is unlikely to recur, and it does not cast doubt on his current reliability, trustworthiness, or judgment. AG ¶ 23(b) is fully applicable because Applicant acknowledges the importance of responsible alcohol consumption and has received counseling which has helped him moderate his drinking. This is evidenced by the fact that he has gone nearly six years without any alcohol-related incident.

AG ¶ 23(c) is not applicable since Applicant is not currently attending counseling

The Applicant recently underwent an assessment from a psychologist who stated that there were no concerns about substance abuse on the part of the Applicant. AG ¶ 23(d) is fully applicable because Applicant's previous completion of a treatment program and adherence to the professional advice he was given as a participant in that program, and the fact there has not been any recurrence of alcohol-related concerns in six years, serve as evidence of his ability to modify his consumption patterns and maintain abstinence according to treatment recommendations.

Personal Conduct

AG ¶ 15 contains the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise security concerns and may be disqualifying in this case:

(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 that individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of: . . . (3) a pattern of . . . rule violations.

The record evidence establishes disqualifying conditions AG ¶¶ 16(c) and 16(d). Additional discussion is in the mitigation section, *infra*.

AG ¶ 17 includes conditions that could mitigate personal conduct concerns:

(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;

(d) the individual has acknowledged the behavior and obtaining counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The SOR cross-alleged paragraphs 1 through 4, *supra*, under SOR ¶ 5.I. See discussion under Drug Involvement and Substance Misuse, Criminal Conduct, Use of Information Technology, and Alcohol Consumption. Security concerns are discussed in paragraphs 1 through 4, *supra*, are adequately covered under the security concerns, *supra*. AG ¶¶ 17(c), 17(d), and 17(e) fully apply.

The Applicant has been forthright about his conduct discussed under these concerns. At no time did he attempt to conceal the facts about his past or lie about them. He has been completely open, honest, and forthcoming with information surrounding each of the allegations alleged. He has demonstrated that he is reliable and trustworthy by reporting his past conduct. There is no evidence to suggest that he is vulnerable to exploitation, manipulation, or duress because of the incidents listed above. Because of his honesty and forthrightness about these incidents, their value as leverage to exploit or manipulate the Applicant is nullified.

Applicant violated the law when he accumulated his multiple traffic citations, but those citations constituted infractions, not criminal conduct. They do, however, raise personal conduct concerns. He has taken two driver improvement courses, one in 2018 and one in 2023, and instead of speeding his car on the highway, he takes his car to a private raceway where he is allowed to race his car. He holds a valid driver's license.

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 the 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 national security 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 H, J, M, G, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The factors supporting a grant of Applicant's national security eligibility are significant. Applicant achieved some important educational, professional, and employment goals, demonstrating his self-discipline, responsibility, and dedication. More importantly, he recognized that he was on a drug induced self-destructive path and had the wherewithal to change the direction his life was headed to become a law abiding and productive member of society. His downward trajectory began after his brief stint in the Air Force. He returned home to his small town and reconnected with his peer group who were involved with drugs. His drug use extended to becoming involved in the drug trade. Realizing there was more to life than what he found in his small town, he realized he

needed to remove himself from that environment, which he did by moving to a different state. By doing so, he completely cut his ties to anyone associated with drugs or the drug trade.

Relocating to a location where he did not have a support group also had its challenges. He had the good fortune to find a niche in computer-related work where he continued to utilize and develop his talents in that field. He did, however, briefly become involved in sporadic drug experimentation and an April 2017 DUI was an added setback. He diligently fulfilled all the requirements of his sentence and probation. Despite being on probation, his prospective employer saw promise in Applicant and in May 2019, he began working for his current defense contractor employer. As his reference letters and employee performance demonstrate, he has been on a positive trajectory since. He excelled in his work role, took on additional responsibilities, and pursued training courses to deepen his knowledge of security requirements.

Three positive qualities, among others, are associated with trustworthiness, reliability, and being an overall good security risk. They are a strong sense of social responsibility, self-control, or the ability to exercise responsible and rational control over one's impulses, and the ability to maintain personal or job commitments over time. These positive qualities may outweigh some unfavorable information.

Based on the evidence compiled from Government and Applicant exhibits as well as hearing testimony, Applicant is an individual who is socially responsible, maintains self-control, and has maintained longstanding commitments. He has the appropriate respect for authority and has complied with rules and regulations. His behavior is under conscious control, thinking before acting, taking his duties seriously, and he is capable of delaying immediate gratification to achieve a long-term goal. His successes in academics and his career environment are evidence of this. His continued commitment to employers in the past and current, illustrate an individual with the ability to maintain commitments to people and organizations.

In short, the allegations against Applicant do not define who he is as a person, nor do they accurately represent the strong values he lives by now. He has been more than cooperative with the investigative process regarding the allegations against him. His firm and continued commitment to right the ship and fully comply with rules and regulations over time weighs heavily in his favor.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. In conclusion, Applicant has mitigated Guidelines H, J, M, G, and E security concerns.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a – 1.k:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline M:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline G:	FOR APPLICANT
Subparagraphs 4.a – 4.c:	For Applicant
Paragraph 5, Guideline E:	FOR APPLICANT
Subparagraphs 5.a – 5.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

Robert Tuider
Administrative Judge