



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



In the matter of:)
)
) ISCR Case No. 23-02557
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: Caleb N. Byrd, Esq.

04/23/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the Guideline H (drug involvement and substance misuse), Guideline G (alcohol consumption), and Guideline J (criminal conduct) security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On December 19, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, G, and J. The DCSA CAS acted under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

Applicant provided an undated response to the SOR (Answer). He admitted all the SOR allegations (SOR ¶¶ 1.a through 1.e, 2.a, 2.b, and 3.a.), and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned this case on September 12, 2024. DOHA issued a notice on December 13, 2024, scheduling the hearing for January 28, 2025. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1 through 6; Applicant testified and offered five documents labeled as Applicant Exhibits (AE) A through E; and all exhibits were admitted into evidence without objection. Applicant requested I hold the record open so he could supplement the record with additional documentation. Without objection, I held the record open until February 11, 2025. DOHA received the hearing transcript (Tr.) on February 2, 2025. Applicant timely submitted AE F, and the record closed on February 11, 2025.

Findings of Fact

Applicant is 31 years old. He is engaged to his girlfriend who, has a daughter, age seven, from a previous relationship. He loves his fiancée's daughter as if she were his own child. In June 2018, he earned a trade-school certification. Since May 2023, he has been employed full time as a journeyman electrician for a DOD contractor. His annual salary is approximately \$63,000. His employer is sponsoring him for a DOD security clearance. (GE 1; Tr. 15, 20-21)

Drug Involvement and Substance Misuse

Applicant used and purchased marijuana from about 2012 to December 2022. (SOR ¶¶ 1.a and 1.b) During the hearing, he said that he may have used marijuana three to five times a week, but at times it varied, and he could have used it as much as ten times a week. The recreational use of marijuana is not legal in his state of residence. His fiancée has never used marijuana with him. In about August 2020, she gave him an ultimatum, in part, to stop using marijuana. Applicant continued to use marijuana, without her knowledge, until December 2022, when he made the decision to quit using marijuana altogether. He has always been aware marijuana is prohibited under federal law. (Tr. 23-25, 27-30, 33-36; GE 2, 3)

Applicant was arrested for possession of marijuana in about June 2012. (SOR ¶ 1.c) He was 18 years old and had just graduated from high school. The court placed him on deferred adjudication, and he was required to complete six months of probation. After he successfully completed his probation period, the charge was subsequently dismissed. (Tr. 15-16)

Applicant was arrested for possession of marijuana in August 2014. (SOR ¶ 1.d) He pled guilty to the misdemeanor charge and paid a fine and court costs. (Tr. 17; GE 4)

Alcohol Consumption

Applicant was arrested on two separate occasions in 2020 and charged with driving while intoxicated (DWI). (SOR ¶¶ 2.a and 2.b) His first DWI arrest occurred in February 2020. The charge was amended to failure to control speed, and it was later dismissed after he completed an alcohol-education class and attended a Mothers Against Drunk Driving course. The second DWI arrest occurred in August 2020 and was dismissed due to insufficient evidence. It is important to note that at the time of his arrest, 46 grams of marijuana and two digital scales were found in his vehicle. (SOR ¶ 1.e) Although Applicant admitted this information, he was not charged with possession of marijuana or with any other drug-related offense. He also acknowledged he was intoxicated on both occasions when he was charged with DWI offenses in 2020. (Tr. 18-19, 26-27; GE 5, 6; AE A, B, C, D)

Applicant does not believe he has a current problem with his consumption of alcohol. He generally drinks alcohol in moderation on the weekends with his fiancée. They usually drink between two and three beers each on a Friday and Saturday. If he goes out and consumes alcohol, he does not drive and uses the services of a ride transportation company. (Tr. 27, 30)

Criminal Conduct

The information alleged in SOR ¶¶ 1.c, 1.d, 2.a, and 2.b, was also cross alleged under Guideline J. (SOR ¶ 3.a)

Applicant has not been charged with any criminal offenses in the past five years. His girlfriend told him following his second 2020 DUI arrest that if he did not change his behavior, she and her daughter would leave him. He said her ultimatum is when he decided he needed to change his life and stop drinking alcohol irresponsibly. He has matured and stated he is not the same man he was five years ago. He loves his family and his job, and although it took him until December 2022 to completely stop using marijuana, he would not do anything reckless to jeopardize his current situation. He no longer associates with the friends he used to hang out with five years ago. (Tr. 19-23, 25, 28)

Applicant disclosed his marijuana use and all his criminal offenses on his June 2023 security clearance application (SCA). He was candid about his past alcohol, drug, and criminal transgressions during the security clearance investigation. He is remorseful about his past misconduct and poor decision-making. (GE 1, 2)

Character Evidence

Applicant submitted a positive employee performance (180-Day Probationary) appraisal ending November 2023. His supervisor stated, “[Applicant] is a great addition to the [team]. He has a well-rounded background and has a great and outgoing work ethic. [Applicant] has a great thirst for knowledge and is willing to listen and learn. I look forward to working with him for years to come....” Applicant also submitted 13 character reference letters from family, friends, and work associates. The overall theme of these letters indicate he is dependable, hardworking, and a trustworthy individual. (AE E, F)

Policies

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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to

classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse; and

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

Applicant admitted he used and purchased marijuana, with varying frequency, from about 2012 to December 2022. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following 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; and

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 a statement of intent to abstain from all drug involvement or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's last use of marijuana occurred over two years ago. He credibly testified that he decided to stop all use of marijuana in December 2022. I was somewhat troubled that he continued to use marijuana for over two years after his fiancée give him an August 2020 ultimatum to turn his life around; however, his sincerity during the hearing convinced me of his earnestness. There is no evidence of more recent use. He is aware marijuana is illegal under federal law and incompatible for individuals entrusted with DOD security clearances. He no longer associates with colleagues who use illegal drugs. He fully disclosed his drug use on his June 2023 SCA and throughout the security clearance investigation. He has learned from his mistakes and is remorseful for his past use of marijuana. Although he did not submit a written statement of intent to abstain from illegal drug use in the future, he verbally stated this information during the hearing. Overall, Applicant's actions demonstrate candor, good judgment and reliability. Mitigating conditions AG ¶¶ 26(a) and 26(b) apply. He successfully mitigated drug involvement and substance misuse security concerns.

Guideline G: 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 conditions that could raise a security concern and may be disqualifying 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). Applicant was involved in two alcohol-related offenses in 2020.

AG ¶ 23 lists two 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; and

(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.

In 2020, Applicant was arrested twice for DWI offenses. He acknowledged he was intoxicated both times he was pulled over by the police. In August 2020, his girlfriend told him that he needed to make some positive changes in his lifestyle, or she would leave him. He does not believe he has a problem with using alcohol and he continues to consume alcohol in moderation. If he consumes alcohol away from home, he uses the services of a ride transportation company instead of driving himself home. He has not had any alcohol-related offenses, nor any criminal charges filed against him, since his last DWI arrest in August 2020.

AG ¶¶ 23(a) and 23(b) apply. Nearly five years have passed since Applicant's second DWI arrest in August 2020. He regrets his past irresponsible drinking and has made positive changes in his life to prevent alcohol-related misconduct from recurring. Overall, I find Applicant successfully mitigated the alcohol consumption security concerns.

Guideline J: Criminal Conduct

The security concern related to the criminal conduct guideline is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying. Three potentially apply:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

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

The record evidence establishes AG ¶¶ 31(a) and 31(b). Applicant was involved in multiple alcohol and drug-related offenses in 2012, 2014, and 2020.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

(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; 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.

Applicant's criminal conduct is not recent. There is no new criminal information alleged under this Guideline other than what was already discussed under Guidelines H and G. He stated that he made positive changes in his life and has matured. He has not been charged with any criminal offense since his last DWI arrest in August 2020. This long period of time without further criminal misconduct demonstrates rehabilitation, good judgment and reliability. I find that future criminal behavior is unlikely to recur. AG ¶¶ 32(a) and 32(d) apply. Applicant successfully mitigated the criminal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, G, and J and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant made positive changes in his life, which are fully supported by 13 character reference letters and his 2023 positive employee performance evaluation in the record. He is dedicated to his new career with a DOD contractor, to his family, and he is committed to remaining drug-free and using alcohol in moderation. I find his future use of illegal drugs, excessive use of alcohol, and criminal conduct is unlikely to recur. I have no reservations or doubts about Applicant's eligibility and suitability for a security clearance. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the SOR's alleged security concerns.

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Paragraph 3, Guideline J:

FOR APPLICANT

Subparagraph 3.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge