DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 25-00062
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: Sean D. Rogers, Esq.

02/19/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct), G (Alcohol Consumption), J (Criminal Conduct), and H (Drug Involvement and Substance Misuse). Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 9, 2023. On March 4, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines G, J, and H. 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 April 18, 2025, and requested a hearing before an administrative judge. On May 1, 2025, Department Counsel amended SOR ¶ 1.a to change the date of the alleged consumption of alcohol from "about 2018" to "about 2005" and amended SOR ¶ 3.a to change the date of a positive urinalysis from "about January 2024" to "about January 2004." Applicant did not object to the amendments.

Department Counsel was ready to proceed on May 2, 2025, and the case was assigned to me on August 19, 2025. On September 4, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 29, 2025. The hearing was cancelled when all administrative judges were furloughed from October 1 to November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

On December 4, 2025, DOHA notified Applicant that the hearing was rescheduled for January 22, 2026. On the morning of the scheduled hearing date, Department Counsel amended the SOR by adding two allegations under Guideline E (Personal Conduct) alleging that Applicant falsified his answers to two questions in an SCA that he submitted in May 2017 (SOR ¶¶ 4.a and 4.b). Applicant's attorney requested that I delay the starting time of the hearing to enable Applicant to respond to the additional allegations. I granted the request.

I convened the hearing as rescheduled. Applicant did not object to the amendment of the SOR to allege two falsifications of an SCA submitted in May 2017. He did not admit or deny the two additional allegations at this point in the hearing.

Government Exhibits (GX) 1 through 11 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses and submitted Applicant's Exhibits (AX) A through O, which were admitted without objection. I kept the record open to enable him to submit additional documentary evidence. He timely submitted AX P, which was admitted without objection. DOHA received the transcript of the hearing on February 3, 2026. The record closed on February 18, 2026.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 2.a. He denied the allegation in SOR ¶ 3.a. He did not admit or deny SOR ¶¶ 4.a and 4.b.

Applicant is a 44-year-old unmanned aerial systems instructor employed by a defense contractor since November 2021. He served on active duty in the U.S. Navy from January 2001 to March 2013, when he was retired with a 100% permanent disability. His Navy service included three deployments to Iraq, serving as a rescue swimmer, a door gunner, and a crew chief during special operations. (Tr. 19-20) In addition to various service medals, unit citations, and qualification badges, he received the Air Medal, Navy and Marine Corps Commendation Medal, three awards of the Navy and Marine Corps Achievement Medal, and three awards of the Good Conduct Medal. He held a security clearance while on active duty in the Navy. He received a clearance again in 2017, while

employed by a federal contractor, and he held it until it was revoked in 2019, after he was convicted of driving under the influence (DUI) and was fired. He received an associate degree from a community college in March 2005 and a bachelor's degree in January 2018. He married in March 2005 and divorced in August 2021. He has a seven-year-old son.

The evidence pertaining to the allegations is summarized below. Although SOR ¶ 1 alleges Applicant's conduct in reverse chronological order, it is discussed below in chronological order for clarity.

SOR ¶ 1.a: consumption of alcohol, at times in excess and to the point of intoxication since about 2005 to at least 2023. Applicant admitted this allegation in his answer to the SOR. He testified that his experience as an enlisted sailor was, "you work hard, you play hard," and heavy alcohol consumption was common. (Tr. 21) The conduct alleged in SOR ¶ 1.a encompasses the conduct alleged in SOR ¶¶ 1.b-1.g.

SOR ¶ 1.g: arrested in May 2005 and charged with domestic violence battery, with alcohol involvement. Applicant and his then wife attended a wedding at which they both consumed alcoholic beverages. According to Applicant, his wife attempted to get into the driver's seat of their vehicle, and he tried to restrain her because she was intoxicated. During the scuffle that followed, he struck his wife above the eye. The police were summoned, and they arrested Applicant and held him overnight. He was charged with battery and domestic violence, both misdemeanors. He received deferred prosecution. His command required him to complete a domestic violence intervention program and undergo alcohol evaluation and counseling. In September 2005, his command reported to the Navy Central Adjudication Facility that he was attending a domestic violence intervention program, undergoing alcohol evaluation and counseling, and was abstaining from use of alcohol. (GX 6; Tr. 26-28) This allegation is established.

SOR ¶ 1.f: charged in June 2011 with drinking on the beach. Applicant was given a citation for drinking beer on the beach and paid a $300 fine. He testified that the police officer told him that beer was allowed only if it was in an unmarked container, and not in a marked beer can that Applicant was holding. (Tr. 29-31) Applicant disclosed this incident during his interview with a security investigator on July 19, 2023. (GX 2 at 7) At the hearing, he testified that he did not know that he had been charged with a crime. (Tr. 32-33) There is no evidence in the record indicating whether this conduct was a crime or a minor civil infraction. *See* Black's Law Dictionary (12th ed. 2024) (defining "civil infraction" as "an act or omission that, though not a crime, is prohibited by law and is punishable"). This allegation is established for an infraction, but not for a criminal charge. This distinction is relevant to an allegation of falsifying an SCA, alleged in SOR ¶ 4.a.

SOR ¶ 1.e: arrested in November 2018 and charged with driving under the influence (DUI). Applicant testified that this incident occurred when he was driving and hit a large boulder in the road as he was driving home from a social event at which he had consumed four to six alcoholic drinks. (Tr. 39). About three hours after the incident, a breathalyzer registered a blood-alcohol content of about 0.15, indicating heavy intoxication. (Tr. 99-100) He was charged with DUI. He pleaded guilty and was sentenced

to 365 days in jail, with 364 days suspended, and a $5,000 fine, which was suspended. (GX 3 at 23). He was required to undergo a drug and alcohol evaluation in January 2019, which concluded that his use of alcohol has not been problematic, and that he did not meet the criteria for treatment at that time, but that he should be referred for education on alcohol's impact. (AX B) He did not disclose this incident when he was hired by a defense contractor in May 2019. He was fired in December 2019, when his employer learned about it. (GX 2 at 6) This allegation is established.

SOR ¶ 1.d: arrested in December 2018 and charged with drunk in public, public intoxication or swearing. Police officers were responding to a report of a drunk and disorderly person at a bar, who refused to leave the premises as the bar was closing. As the police approached the bar, they observed Applicant trying to cross a busy street late at night. According to the police officer, Applicant passed in front of the police vehicle and was almost hit by it. Applicant testified that he was running across the street to catch an Uber. (Tr. 43-44) The police officer noticed a strong odor of alcohol and observed that he was standing unsteadily. Applicant refused to answer questions. He was arrested for being drunk in public. The charge was *nolle prosequi*. (GX 7)

SOR ¶ 1.c: arrested in about March 2022 and charged with public intoxication. A police officer observed Applicant sleeping in a chair on a public sidewalk. The police officer and two employees of a nearby restaurant attempted to awaken him. The police report reflects that he was unable to communicate or to stand on his own. He was taken into custody for his own protection, charged with public intoxication, and released on bond on the following day. (GX 8) At the hearing, he disputed the police account and testified that he was sitting in a chair, waiting for an Uber, and was not incapacitated. (Tr. 111) I found his explanation implausible and contrary to the evidence. This allegation is established.

SOR ¶ 1.b: arrested in about February 2023 and charged with public intoxication and resisting arrest, search, or transport. Applicant spent about five hours at a bar but claimed he had only three drinks during that period. He had left his jacket with a bartender. When he decided to leave the bar, he asked another bartender for his jacket. In his security interview on July 19, 2023, he told the investigator the other bartender ignored him, which made him angry. (GX 2 at 6) At the hearing, he testified that the bartender argued with him and questioned whether it was his jacket. (Tr. 47-48) A police officer asked him to step outside, and he complied, but he insisted that he would not leave the premises until he had his jacket.

The area outside the bar was crowded and noisy. Applicant wears hearing aids, but they were not functioning because he neglected to charge the batteries, and he was unable to hear what the police officers were telling him. He became agitated to the extent that the police officers used a taser twice to subdue him, and they arrested him for being drunk in public and resisting arrest. (Tr. 113-23) He appeared in court in April 2023, represented by counsel. Pursuant to a plea agreement, he pleaded guilty to disorderly conduct and being drunk in public. He paid a fine for the disorderly conduct and received deferred sentencing for being drunk in public. (GX 2 at 10; GX 9) He testified that this incident made him decide to stop drinking. (Tr. 51) This allegation is established.

SOR ¶ 2.a: cross-alleges the conduct alleged in SOR ¶¶ 1.b-1.g as criminal conduct under Guideline J. This allegation is established for the conduct alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.g. It is not established for the conduct alleged in SOR ¶ 1.f.

SOR ¶ 3.a: positive urinalysis for cocaine in January 2004. Applicant tested positive after a random urinalysis conducted by his military unit. He was interviewed by a Navy investigator and denied using cocaine. (GX 4) At the hearing, he testified that he refused to admit his guilt, that he was tried by court-martial, and that he was found not guilty after a forensic scientist testified that his urine sample was contaminated in the laboratory by spillage from another urine sample. The record does not include any documentation of a court-martial, likely because of the passage of time. There is no evidence refuting Applicant's explanation.

SOR ¶ 4.a: falsified SCA in May 2017 by deliberately failing to disclose a charge of drinking on the beach in June 2011. Applicant's May 2017 SCA included multiple questions about police records, including "Have you ever been charged with an offense involving alcohol or drugs?" (GX 11 at 31) Applicant answered, "No" and did not disclose the incident in June 2011 when he received a citation for drinking beer on the beach and paid a fine of $300. At the hearing, he testified that he did not disclose this incident in his SCA because he did not believe the citation amounted to being charged with a crime. (Tr. 32) However, he disclosed it in his most recent SCA in March 2023. (GX 1 at 38) He testified that he disclosed it in this most recent SCA because an investigator who was helping him complete the SCA suggested that he disclose it. (Tr. 33) As noted in the above discussion of SOR ¶ 1.f, there is no evidence in the record that the citation he received for drinking beer at the beach amounted to being charged with a crime. He credibly testified that he did not think it was a crime.

SOR ¶ 4.b: falsified SCA in May 2017 by deliberately failing to disclose marijuana use in 2016. Applicant's May 2017 SCA asked, "In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance." Applicant answered, "No," and did not disclose his marijuana use in 2016. At the hearing, Applicant testified that he purchased a cannabidiol (CBD) product for back pain, believing that it was not marijuana. He used the product only once because it did not relieve his back pain. (Tr. 35-36) There is no evidence in the record showing that the CBD contained sufficient THC to be illegal, and even if the CBD was illegal, there is no evidence that he knew it was illegal.

After the alcohol-related incident in February 2023, Applicant decided to open his own fitness business, concentrating on physical fitness as well as mentoring and counseling. He has his own mentor who talks with him twice a week. He does not believe that he was addicted to alcohol. (Tr. 51) He testified that he never had cravings for alcohol, but that he had "horrible habits" that helped him deal with stress. (Tr. 126) He testified that he believes that "fitness is like a gateway to being disciplined and changing your life." (Tr. 53- 54) He advertises his business on the internet, with a photograph of his wrecked truck from the incident alleged in SOR ¶ 1.e and the statement, "This is what addiction looks like when you lose control." His advertisement states, "Drugs and alcohol consumed

my entire life." It promises, "I help men who've lost their way. Men who are done running from their pain and ready to fight back. I help them regain control, quit the vices and substances that hold them down, and build the strong, disciplined life they've always wanted. If you're ready to stop surviving and start truly living, I'm here to show you how." (GX 10)

Upon questioning by his attorney, Applicant testified that his advertising was not an admission that he was involved with drugs, but it was a marketing tool ("search engine optimization") that he used to call attention to his program. (Tr. 56) As of the date of the hearing, he had been operating his fitness business for about three years. (Tr. 57-58)

Applicant underwent a phosphatidyl ethanol (PEth) test in May 2025, which was negative. In the same month, he submitted a written statement of intent to "remain free from all alcohol abuse," and he acknowledged that "any future involvement with alcohol or alcohol use misconduct of the same will be grounds for revocation of my security clearance and any national security eligibility." (AX C) He was evaluated by a certified alcohol and drug counselor in September 2025, who concluded that Applicant had a mild alcohol use disorder in the past but that his current diagnosis was "no current disorder, sustained remission." The counselor stated, "no substance use treatment is recommended at this time." (AX A at 8-9) Applicant underwent a second PEth test in October 2025, which was negative (AX D), and a third PEth test in January 2026, which also was negative. (AX P)

A witness who served on active duty with Applicant on combat missions in Iraq and continued associating with him in civilian life testified that they have remained in contact since their military service. The witness helped Applicant establish his current business, and he received counseling and advice from Applicant about his personal health and fitness. He is confident that Applicant has put his alcohol issues behind him, established relationships with friends who support him, and will maintain his sobriety. (Tr. 131-37)

Applicant's fiancée graduated from college in 2018 and is a program manager for a major corporation. She testified that she has known Applicant since March 2019, and they have dated since May 2020 and are currently living together. They intend to marry in May 2026. She testified that when they first met, he was going through a divorce, trying to maintain a relationship with his son, and using alcohol to cope with his emotions. She told him that, if he wanted the life he dreamed of, he needed to change the way he was dealing with everyday stressors. He followed her advice. (Tr. 139-43) In a signed statement, she stated, "Where I once doubted him, I now see a man of responsibility, strength, and integrity. He uplifts my daughter, inspires others, and has earned my deepest respect." (AX K)

The attorney who represented Applicant after his arrest in 2023 submitted a statement saying that he reconnected with Applicant six months after the incident and saw "a completely changed man" from the person he had represented in court. He noted that Applicant was focused on his sobriety, was leading others by example, and was

committed to being a good father. He was so impressed by Applicant that he hired him as his "mindset and motivation coach." (AX J)

One of Applicant's clients, who had been discharged from military service for using cocaine, submitted a statement stating "[Applicant] didn't just change my habits. He saved me from staying stuck in a place I thought I would never escape. He gave me the tools and the belief to never go back to that life again." (AX L)

A coworker who has known Applicant for the past year and worked with him daily describes him as reliable, professional, hardworking, and trustworthy. (AX M) Another coworker considers him reliable, dependable, dedicated, and a person of good character. (AX O) Applicant's current supervisor for the past year submitted a statement describing him as honest, hardworking, a fast learner, trustworthy, and very enthusiastic as a teacher. (AX N)

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

SOR ¶¶ 1.a-1.g allege conduct falling under this guideline. SOR ¶ 1.a duplicates the conduct alleged in SOR ¶¶ 1.b-1.g. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) Accordingly, I have resolved SOR ¶ 1.a in Applicant's favor.

The concern under this guideline is set out in AG ¶ 21: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." The following disqualifying conditions under this guideline are potentially applicable:

> 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.

AG ¶¶ 22(a) and 22(c) are established by Applicant's admissions and the evidence submitted at the hearing. AG ¶ 22(d) is established but its probative value is limited by the evaluator's finding that his alcohol use disorder is in full remission.

The following mitigating conditions are potentially applicable:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

The first prong of AG ¶ 23(a) focuses on whether the disqualifying conduct was recent. There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. 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. *See* ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant decided to stop drinking three years ago, after his alcohol-related incident in February 2023. Three years is a "significant period of time." He has acknowledged his maladaptive alcohol use. He has not completed a formal alcohol abuse treatment program and has not participated in sources of support such as Alcoholics Anonymous. However, he has found a mentor who talks with him twice a week. His fiancée does not consume alcohol. His fiancée told him he needed to change the way he dealt with stress, and the evidence reflects that he heeded her advice, realized that there was more to life than sitting at a bar and drinking, and turned his life around. His former attorney noticed his change in attitude and behavior and hired him as a fitness counselor. An alcohol and drug counselor evaluated him in September 2025 and concluded that his alcohol abuse disorder was in sustained remission and that "treatment is not clinically indicated at this time." (AX A at 8-9) His multiple PEth tests have verified his continued abstinence from alcohol. Based on all the evidence, I conclude that AG ¶¶ 23(a) and 23(b) are established.

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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

Applicant's citation and fine for drinking beer at a beach in May 2017, alleged in SOR ¶ 1.f, is not established as criminal conduct. There is no evidence in the record showing whether it was a crime or a minor civil infraction, akin to a traffic or parking ticket, which is not a crime. Accordingly, I have concluded that the evidence has not established that the conduct alleged in SOR ¶ 1.f and cross-alleged in SOR ¶ 2.a is criminal conduct. However, the conduct alleged in SOR ¶¶ 1.b-1.e and 1.g, cross alleged in SOR ¶ 2.a is established by the evidence and is sufficient to establish AG ¶¶ 31(a) and 31(b).

The following mitigating conditions are potentially applicable:

> AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
>
> AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

All of the criminal conduct alleged in the SOR is related to alcohol use. Thus, I conclude that AG ¶¶ 32(a) and 32(d) are established for the reasons set out in my above discussion of AG ¶¶ 23(a) and 23(b) under Guideline G.

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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.

On December 21, 2021, the Director of National Intelligence (the Security Executive Agent SecEA)) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

- With respect to the use of CBD products, agencies should be aware that using these cannabis derivatives may be relevant to adjudications in accordance with SEAD 4. Although the passage of the Agricultural Improvement Act of 2018 excluded hemp from the definition of marijuana within the Controlled Substances Act, products containing greater than a 0.3 percent concentration of delta-9 tetrahydrocannabinol (THC), a psychoactive ingredient in marijuana, do not meet the definition of "hemp." Accordingly, products labeled as hemp-derived that contain greater than 0.3 percent THC continue to meet the legal definition of marijuana, and therefore remain illegal to use under federal law and policy.

The following disqualifying conditions are potentially applicable:

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

AG ¶ 25(b): testing positive for an illegal drug;

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

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

The evidence submitted at the hearing established only AG ¶ 25(b). However, Applicant testified that he was tried by court-martial and acquitted after submitting evidence that the urine sample that was the basis for the charges against him was the

product of a contaminated sample. His testimony was uncontradicted. He has rebutted this allegation.

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 relevant disqualifying condition under this guideline is AG ¶ 16(a):

> [D]eliberate 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.

Applicant testified that he did not disclose his citation for drinking beer at a beach in his May 2017 SCA because he did not believe that the citation he received amounted to being "charged" with an "offense." To his credit, he disclosed the incident in his most recent SCA, based on advice from an investigator. I conclude that SOR ¶ 4.a, alleging deliberate failure to disclose a charge of drinking on a beach, is not established.

Applicant also did not disclose his CBD use in 2016 when he submitted his May 2017 SCA. The SOR does not allege marijuana use under Guideline H. He testified that he did not disclose his CBD use because he believed the CBD product he purchased and used was not marijuana. The distinction between legal CBD products that are legal and those that contain a sufficient concentration of THC to be illegal is not well known or understood.

On December 21, 2021, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications, including the differences between legal CBD and illegal CBD. It states in pertinent part:

> With respect to the use of CBD products, agencies should be aware that using these cannabis derivatives may be relevant to adjudications in accordance with SEAD 4. A5though the passage of the Agricultural Improvement Act of 2018 excluded hemp from the definition of marijuana within the Controlled Substances Act, products containing greater than a 0.3 percent concentration of delta-9 tetrahydrocannabinol (THC), a

> psychoactive ingredient in marijuana, do not meet the definition of "hemp." Accordingly, products labeled as hemp-derived that contain greater than 0.3 percent THC continue to meet the legal definition of marijuana and therefore remain illegal to use under federal law and policy.

The record does not include evidence that the CBD product in question was illegal based on the percent of THC it contained. Furthermore, possession of an illegal substance is not a crime if it was without knowledge of the illegal nature of the substance. Even if it was an illegal substance, Applicant credibly testified that he did not know that the CBD product that he purchased and used was illegal. Thus, I conclude that he did not deliberately fail to disclose marijuana use, and SOR ¶ 4.b, alleging deliberate failure to disclose marijuana use, is not established.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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, J, H, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegations related to drug involvement and falsification of his SCA and mitigated the security concerns raised by his alcohol consumption and alcohol-related criminal conduct.

Formal Findings

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

Paragraph 1, Guideline G (Alcohol Consumption):	FOR APPLICANT
Subparagraph 1.a-1.g:	For Applicant
Paragraph 2, Guideline J (Criminal Conduct):	FOR APPLICANT

Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline H (Drug Involvement and Substance Misuse):	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraph 4.a:	For Applicant
Subparagraph 4.b:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge