



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00926
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

02/12/2015

**Decision**

LYNCH, Noreen A, Administrative Judge:

On April 15, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct). The action was taken under Executive Order 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), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated November 17, 2014.<sup>1</sup> Applicant received the FORM on November 21, 2014, but did not submit a response to the FORM. I received the case assignment on February 5, 2015. Based on a review of the case file, submissions, and exhibits, I find Applicant

---

<sup>1</sup>The Government submitted 18 items in support of its case.

failed to meet his burden regarding the security concerns raised. Security clearance is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct).

Applicant is a 51-year-old employee of a defense contractor. He graduated from high school and received a degree from a technical college in 1988. Applicant is divorced and has a son. He has worked for his current employer since 1983. (Item 4) Applicant held a security clearance from 1998 until April 2012. The clearance was revoked in 2012. He completed a security clearance application on August 14, 2013.

Medical records in the file show that Applicant suffered a stroke as a result of a clot in 2008. He was hospitalized and claimed that he does not recall having used cocaine that was found in his system. He blames a poor short-term memory and memory loss for no recall of the cocaine. He denied any past drug use in a 2008 investigative interview. (Item 12)

### **Drug Involvement**

From at least March 2008 until at least October 2013, Applicant used cocaine. During that time, he held a security clearance. (Item 8) Although he could not remember the exact dates of use, he used about half a gram about eight times with his girlfriend at her home. He would also snort cocaine in his home. Applicant states that he has never sold the drug. He has never been diagnosed with a problem, and he states that he has stopped the use of the illegal substance. He does not intend to use any illegal drug or drugs in the future.

Specifically, the record provides that in March 2008, Applicant was brought to the hospital emergency room for what was eventually diagnosed as a multi-drug overdose with likely narcotic dependence. (Item 16) Applicant was found by his coworkers after he failed to appear for work. Applicant had been drinking the night before, using cocaine, and was found in his hotel room face down and unconscious on the floor. (Item 16)

A drug screen taken of Applicant came back positive for benzodiazepines, cocaine, and methadone. (Item 16) Medical records also show that he had a "known history" of substance abuse as well as alcohol abuse. (Item 16) Applicant was absent from work from March 2008 until September 2008, for the use of cocaine and alcohol. (Item 10) In November 2013, Applicant admitted that he used cocaine from 2008 until October 2013. (Item 8) Applicant tested positive for drug use when he was receiving treatment for alcohol issues. (Item 8)

## **Alcohol Consumption**

Applicant has a history of alcohol-related incidents spanning the years 1994 until approximately 2012. Applicant started drinking when he was 21 years old. (Item 8) He drank beers and would become intoxicated once a week before his arrest in 2012. He stated that drinking made him happy. He admits that his drinking caused him problems with driving.

In 1994, Applicant was charged with DUI first offense. The charge was later dismissed. In approximately 1996, Applicant was charged with DUI Liquor and Refusal to Submit to a Chemical Test. He was found not guilty of the DUI offense, but pled guilty to the refusal charge. As part of his sentence, Applicant was required to complete an alcohol awareness course, but he failed to do so. (Item 12)

After more than ten years, Applicant was diagnosed in November 2008 with alcohol abuse (in remission). This occurred when he was admitted to the hospital in 2008 for an apparent drug overdose. Applicant received treatment for alcohol from August 2008 until November 2008. (Item 7) He participated in group counseling. In September 2012, Applicant was charged with DUI/First Offense. On his way home from a bar after work, he hit a car. (Item 5) He pled nolo contendere to the charge. As a result, Applicant's license was suspended for 90 days, and he was ordered to receive alcohol counseling. (Item 5)

Although never arrested for illegal drug use, Applicant was arrested twice for alcohol-related incidents. Applicant indicated that he began alcohol counseling in August 2013. (Item 5) During a 2013 investigative interview, Applicant stated that he never drinks to intoxication. It is not entirely clear if he still drinks. Applicant believes the alcohol incidents are isolated. (Item 8)

Applicant did not provide any information or documentation pertaining to his alcohol or drug issues in response to the FORM.

## **Personal Conduct**

In addition to the alcohol and drug incidents, Applicant has had charges and conviction for various criminal incidents from 1981 until 1998. The record is replete with incidents, including a 1981 charge of entering a building with a felonious intent. Applicant pled nolo contendere and received a two-year suspended sentence and placed on two years probation, (Item 9) In 1982, Applicant was charged with operating without a license and was convicted of the offense. In 1989, Applicant was arrested and charged with domestic assault. He was sentenced to one year of probation and counseling. (Item 9) In approximately March 1998, Applicant was charged with leaving the scene of an accident with property damage. (Item 9)

When Applicant was interviewed in November 2008, he stated that he had never used any illegal drugs. In his 2009 DOHA interrogatories, Applicant repeatedly stated that to his knowledge, he had not taken any illegal drugs.

On Applicant's August 14, 2013 security clearance application, in response to Section 22-Police Record (EVER) he listed his 2012 DUI arrest, but did not disclose his other convictions or offenses as noted above. On that same 2013 application, in response to Section 23 - Illegal Drug Use (last 7 years) he answered "No:" and did not list the use of cocaine in March 2008.

Applicant did not acknowledge to the Government during 2008 and 2009 that he had any illegal drug use. In his 2013 security clearance application, Applicant denied any drug use within the preceding seven year period, and denied drug use while holding a security clearance. (Item 8) He falsified his security clearance application and misled the Government. During his November 2013 interview, Applicant disclosed that he had used cocaine approximately eight times between 2008 and 2013. (Item 8)

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." <sup>2</sup> The burden of proof is something less than a preponderance of evidence. <sup>3</sup> The ultimate burden of persuasion is on the applicant. <sup>4</sup>

---

<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

- (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and
- (2) inhalants and other similar substances.

---

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse (see above definition);
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;
- (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted his use of illegal drugs (cocaine) from 2008 until 2013. He held a security clearance at the time. In 2008, he tested positive for cocaine. AG ¶ 25(a), (b) and (g) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

- (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) a demonstrated intent not to abuse any drugs in the future, such as:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(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.

Applicant's last use of cocaine was in 2008. He states that he has not used any illegal drugs since that time. However, he had deliberately failed to disclose the use of cocaine until 2013. He did not obtain a current evaluation from a licensed professional which verifies his non-drug use. Given, his history, I have doubts as to his rehabilitation in this case.

### **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to 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 describes conditions that could raise a security concern and may be disqualifying:

(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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant has alcohol-related incidents from 1994 until 2012. It is not clear whether he continues to drink. He did not provide any information in response to the FORM. He did not complete an earlier recommended alcohol treatment program. He claims that he is attending alcohol treatment at the present time. AG ¶ 22(a) and (c) apply.

AG ¶ 23 provides 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 good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

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

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

After considering the mitigating conditions, I do not find that, given the information in this record, he has mitigated the alcohol concern.



## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to 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 information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying condition exists when there is "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities." Under AG ¶ 16(b) a disqualifying condition exists by "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Applicant deliberately misled the government by not including any information about his drug involvement or his numerous alcohol-related incidents, as well as his domestic assault arrest, entering a building with felonious intent, and leaving the scene of an accident. He falsified several security clearance applications concerning his various charges and arrests. It was not until 2013 that Applicant acknowledged his use of cocaine in 2008. His behavior and personal conduct are disqualifying as they raise questions about his judgment, reliability, truthfulness, and willingness to comply with the law.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment until 2013. He provided no information that indicates he was ill-advised. The intentional omissions occurred over a period of six years. The incidents are too recent and serious to be mitigated by the passage of time. I have serious doubts about his good judgment and reliability. He has not provided information in this record to show that he has met his burden of proof to mitigate the personal conduct concern.

### **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 51 years old. He has worked for the same company since 1998. He held a security clearance during these years, until a revocation in 2012. He also used cocaine in 2008, while sometimes holding security clearance. He has a history of alcohol-related incidents from 1994 until 2012.

Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in his case. He failed to offer evidence of current alcohol treatment. He has lied to the Government concerning his cocaine use for years. Applicant has not shown good judgment and honesty. He has disregarded rules and regulations over the years, including while holding a security clearance. He has not provided documentation to show alcohol and drugs are no longer a problem. I have doubts given the record. Accordingly, Applicant has not mitigated the security concerns. Clearance is denied.

### **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 G:	AGAINST APPLICANT
Subparagraphs 1.a- 1d:	Against Applicant
Paragraph 2., Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a through 3.n:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

---

NOREEN A. LYNCH.  
Administrative Judge