



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



In the matter of:)
)
 _____¹) ISCR Case No. 12-02918
)
 Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

11/07/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding alcohol consumption and criminal conduct, but failed to mitigate the drug involvement and personal conduct security concerns. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On January 7, 2002, Applicant applied for a security clearance and submitted an Electronic Personnel Security Questionnaire (EPSQ) version of a Security Clearance Application.² On November 10, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.³ On an unspecified date, the Department of Defense (DOD) issued him a set of

¹ A suffix was incorrectly added to Applicant's name in most of the documentation submitted. Although Applicant repeatedly attempted to have it deleted, it remained.

² GE 5 (EPSQ, dated January 7, 2002).

³ GE 1 (e-QIP, dated November 10, 2011).

interrogatories. He responded to the interrogatories on April 5, 2013.⁴ On another unspecified date, the DOD issued him another set of interrogatories. He responded to those interrogatories on April 5, 2013.⁵ On another unspecified date, the DOD issued him a Subject Interview Verification. He responded to that request on April 5, 2013.⁶ On June 19, 2013, the DOD issued a Statement of Reasons (SOR) to him under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines J (Criminal Conduct), H (Drug Involvement), G (Alcohol Consumption), and E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant indicated that he received the SOR on July 28, 2013, a date which appears to be in error. In a sworn statement, dated July 24, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 27, 2013. The case was assigned to me on August 30, 2013. A Notice of Hearing was issued on September 11, 2013, and I convened the hearing, as scheduled, on September 25, 2013.⁷

During the hearing, six Government exhibits (GE 1 through GE 6) were admitted into evidence without objection. Applicant testified, but offered no exhibits. The transcript of the hearing (Tr.) was received on October 10, 2013. The record closed on October 10, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR under criminal conduct (¶¶ 1.a. and 1.b.), one of the three factual allegations under drug

⁴ GE 2 (Applicant's Answers to Interrogatories, dated April 5, 2013).

⁵ GE 3 (Applicant's Answers to Interrogatories, dated April 5, 2013).

⁶ GE 4 (Subject Interview Verification, dated April 5, 2013).

⁷ The Notice of Hearing was issued 14 days before the scheduled date for the hearing, but Applicant and Department Counsel previously had telephone discussions regarding the time and location of the hearing. Accordingly, when specifically questioned regarding any objection to the period of actual notice, Applicant waived the 15-day notice specified in the Directive (§ E3.1.8.). See Transcript (Tr.) at 11.

involvement (§ 2.b.), the factual allegation under alcohol consumption (§ 3.a.), and the factual allegation under personal conduct (§ 4.a.). He denied one allegation under drug involvement (§ 2.a.), and failed to answer another (§ 2.c.). He subsequently admitted the allegation he had failed to address. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 31-year-old employee of a defense contractor. He has been serving as a telecommunications technician 2 with his current employer since February 2008. He was previously employed as a technician, bar back, clerk, and telemarketer.⁸ He was unemployed from April 2001 until February 2002.⁹ A May 2001 high school graduate, Applicant enlisted in the U.S. Army in February 2002, and served honorably in an enlisted capacity until February 2006, when he was released upon the completion of his required active service.¹⁰

During his military service, Applicant was awarded the Army Commendation Medal, the Army Achievement Medal (two awards), the Army Good Conduct Medal, the National Defense Service Medal, the Global War on Terrorism Service Medal, the Army Service Ribbon, the Overseas Service Ribbon, the Iraq Campaign Medal, and the Parachutist Badge. He served in Operation Iraqi Freedom from November 30, 2004 until November 30, 2005.¹¹ Applicant was granted a secret security clearance in 2002.¹² He has never been married.¹³

Alcohol Consumption, Drug Involvement, and Criminal Conduct

One evening after work, in June or July 2011,¹⁴ while watching a live band perform over a two-hour period, Applicant consumed three bourbon and cokes at a hotel in Bahrain. He was alone.¹⁵ He did not consider himself to be in any way even partially impaired.¹⁶ He departed and was driving in a rental car to an unspecified destination when another driver failed to stop at a red light and struck Applicant's

⁸ GE 1, *supra* note 3, at 9-12; GE 5, *supra* note 2, at 2.

⁹ GE 1, *supra* note 3, at 13.

¹⁰ GE 6 (Certificate of Release or Discharge from Active Duty (DD Form 214), dated February 28, 2006).

¹¹ GE 6, *supra* note 10.

¹² GE 1, *supra* note 3, at 26-27.

¹³ GE 1, *supra* note 3, at 16.

¹⁴ Although Applicant stated the incident occurred in June 2011 in both his e-QIP and in his statement to an investigator from the U.S. Office of Personnel Management (OPM), he admitted the SOR allegation that it occurred in July 2011. See GE 1, *supra* note 3, at 22; see GE 4, *supra* note 6, at 1; see Applicant's Answer to the SOR, at 1.

¹⁵ GE 4, *supra* note 6, at 1; Tr. at 21-22, 42.

¹⁶ Tr. at 42.

vehicle.¹⁷ Under Bahraini law, “any sign of having consumed alcohol [while driving] may be taken as prima facie evidence of driving under the influence, which can lead to imprisonment and/or fines of up to 1,000 Bahraini dinars (about \$2,700).”¹⁸ Likewise, “public drunkenness and disorderly behavior can result in arrest and one drink may be sufficient grounds for a drunken driving arrest.”¹⁹ Applicant was detained by the authorities, fined \$1,500, lost his driving privileges for three months, and was required to pay for the damage to both the other vehicle and his rental car.²⁰ He reported the incident to his supervisor. Applicant was subsequently issued a letter of reprimand, restricted to the military facility for about three months, directed not to consume alcohol, and required to attend three meetings of Alcoholics Anonymous (AA).²¹ Applicant complied with all requirements and attended AA.²²

Other than attending the AA meetings, Applicant has never received any medical treatment or counseling related to the consumption of alcohol.²³ He has never been evaluated or diagnosed for alcohol abuse or dependence.²⁴

Applicant still consumes alcohol, generally limited to two to three, or possibly four, glasses of bourbon, whiskey, or beer, on weekends at his residence, at a friend’s home, or elsewhere. In those circumstances, Applicant no longer drinks and drives, but either takes a taxi or is driven by friends. “I don’t get behind the wheel anymore. I don’t take a chance.”²⁵ He denies drinking to intoxication,²⁶ and there is no evidence to refute his contention.

According to Applicant, early 2011 was a difficult period for him. His grandmother was ill, his parents were apparently separated, and they were going through rough times financially. Applicant was the shoulder they all leaned on, and he was supporting his mother financially.²⁷ Between April and May 2011, Applicant smoked marijuana

¹⁷ GE 4, *supra* note 6, at 1.

¹⁸ U.S. Department of State, *Bahrain - Country Specific Information*, dated June 20, 2013, at 7.

¹⁹ U.S. Department of State, *Bahrain - Country Specific Information*, *supra* note 17, at 5.

²⁰ GE 4, *supra* note 6, at 1; Tr. at 43-44. Although he was fined by the authorities, there is no evidence to refute Applicant’s contention that he was never officially “charged” with driving under the influence.

²¹ GE 4, *supra* note 6, at 1.

²² Tr. at 48-49.

²³ GE 4, *supra* note 6, at 2; GE 2, *supra* note 3, at 3.

²⁴ GE 4, *supra* note 6, at 2; Tr. at 37.

²⁵ Tr. at 35-36, 54-55.

²⁶ GE 2, *supra* note 4, at 2.

²⁷ Tr. at 25.

cigarettes approximately six times.²⁸ Although Applicant had previously been granted a security clearance, and had attended briefings regarding his responsibilities and substance abuse, he ignored his responsibilities and used marijuana.²⁹ He attributed his use of marijuana to curiosity and unspecified peer pressure.³⁰ Marijuana made him feel happy, hungry, and sleepy.³¹ A friend supplied the marijuana to him at no cost.³² On May 15, 2011, Applicant was driving in his car at the beach with the windows down, listening to music, and smoking a marijuana cigarette. A police officer approached him and had him pull over because of the music and the odor of marijuana.³³ A search of the vehicle revealed a marijuana joint and a “grinder” used for preparing marijuana cigarettes.³⁴ Applicant was cited for one count of possession of marijuana less than 20 grams. He appeared in court, was fined, and entered into a pre-trial diversion program. He successfully completed the program in December 2011, and the charge was dismissed.³⁵

Applicant has never received any medical treatment or counseling related to the substance abuse.³⁶ He has never been evaluated or diagnosed for substance abuse or dependence.³⁷ Applicant’s last use of marijuana occurred in May 2011, and he intends to refrain from such use in the future.³⁸ He no longer associates with other substance abusers.³⁹

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁴⁰ As Commander in Chief,

²⁸ GE 4, *supra* note 6, at 3; Tr. at 30-32.

²⁹ Tr. at 32-33.

³⁰ GE 4, *supra* note 6, at 3.

³¹ GE 4, *supra* note 6, at 3.

³² GE 4, *supra* note 6, at 3.

³³ GE 4, *supra* note 6, at 3.

³⁴ Tr. at 27-29.

³⁵ GE 4, *supra* note 6, at 3; Tr. at 28. Applicant offered no information regarding the nature or components of the program, and it is unclear if he was required to attend any drug education, therapy, or treatment components.

³⁶ GE 3, *supra* note 5, at 3; Tr. at 37.

³⁷ Tr. at 37.

³⁸ Tr. at 53.

³⁹ GE 4, *supra* note 6, at 3; Applicant’s Answer to the SOR, at 1.

⁴⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁴¹

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 useful in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."⁴² The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁴³

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 or safeguard classified information. Such decisions entail a certain degree of legally permissible

⁴¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴² "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

⁴³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁴⁴

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴⁵ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It 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. 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.

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption 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 guideline notes a condition that could raise security concerns. Under 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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent* is potentially disqualifying. In Bahrain, Applicant was presumed to be driving under the influence because he had consumed alcohol before the incident. He was detained by the authorities, fined, lost his driving privileges for three months, and was required to pay for the damage to both vehicles. AG ¶ 22(a) has been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(a), the disqualifying condition may be mitigated where *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.*

AG ¶ 23(a) applies. Although Applicant has apparently been consuming alcohol for a number of years, the incident in Bahrain was his only alcohol-related brush with

⁴⁴ *Egan*, 484 U.S. at 531

⁴⁵ See Exec. Or. 10865 § 7.

the law. As noted above, one drink may be sufficient grounds for a “drunken driving arrest” in Bahrain. While there is no evidence that Applicant was, in fact, impaired or intoxicated, under the law as it existed, Applicant was considered to be driving under the influence. Applicant attended the AA sessions required by his employer. Applicant has never received any medical treatment or counseling related to the consumption of alcohol, and he has never been evaluated or diagnosed for alcohol abuse or dependence. Applicant still consumes alcohol, responsibly, and now avoids drinking and driving. When he drinks alcohol, he either takes a taxi or is driven by friends. He denies drinking to intoxication. Applicant’s two-and-one-quarter years of responsible alcohol consumption is viewed favorably. Applicant has furnished substantial evidence of positive actions taken regarding his consumption of alcohol that enables me to conclude that his isolated alcohol-related behavior has been put behind him and will not recur.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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;

(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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), *any drug abuse (see above definition)*, is potentially disqualifying. Similarly, under AG ¶ 25(c), *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*, may raise security concerns. Also, AG ¶ 25(g) may apply where there is *any illegal drug use after being granted a security clearance*.

Between April and May 2011, Applicant smoked marijuana cigarettes approximately six times although he had previously been granted a security clearance in 2002, and had attended briefings regarding his responsibilities related to substance

abuse. Nevertheless, he ignored his responsibilities and used marijuana because it made him feel happy, hungry, and sleepy. His substance abuse was motivated by curiosity, unspecified peer pressure, and concerns regarding his grandmother's health and his parents' financial problems. On one occasion in May 2011, a search of his vehicle by police revealed a marijuana joint and a "grinder." Applicant was cited for one count of possession of marijuana less than 20 grams. He appeared in court, was fined, and entered into a pre-trial diversion program. Because he successfully completed the program in December 2011, the charge was dismissed. AG ¶¶ 25(a), 25(c), and 25(g) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying conditions may be mitigated where *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.* Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is *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;

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

AG ¶¶ 26(a) and 26(b) minimally apply. Applicant's marijuana abuse occurred in mid-2011, and ceased when he was cited by the police, only two-and-one-quarter years ago. Applicant has never received any medical treatment or counseling related to the substance abuse, and he has never been evaluated or diagnosed for substance abuse or dependence. While Applicant intends to refrain from such use in the future, he has never submitted a signed statement of intent with automatic revocation of clearance for any future violation. Applicant's abstinence is viewed favorably, and he should be encouraged to continue it. He no longer associates with other substance abusers. However, because Applicant has not furnished a reasonable basis for ignoring his fiduciary responsibilities of holding a security clearance, but instead resorted to marijuana use, such use may recur, and the uncertainty continues to cast doubt on Applicant's reliability, trustworthiness, or good judgment.

Guideline J, Criminal Conduct

The security concern under the guideline for Criminal Conduct 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), *a single serious crime or multiple lesser offenses* is potentially disqualifying. As noted above, Applicant was cited for driving under the influence in Bahrain. He was detained by the authorities, fined \$1,500, lost his driving privileges for three months, and was required to pay for the damage to both the other vehicle and his rental car. He was also cited for one count of possession of marijuana less than 20 grams after he was detected smoking marijuana, and a search of the vehicle revealed a marijuana joint and drug paraphernalia. He appeared in court, was fined, and entered into a pre-trial diversion program. AG ¶¶ 31(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where *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*. Similarly, AG ¶ 32(d) may apply where *there is evidence of successful rehabilitation: including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*.

As to both the alcohol-related incident, and the use and possession of marijuana and the possession of drug paraphernalia, AG ¶¶ 32(a) and 32(d) apply. Applicant's incident in Bahrain occurred in a country where just one drink may be sufficient grounds for a drunken driving arrest. He did not consider himself to be in any way even partially impaired. Nevertheless, he was fined and required to pay for property damage. The possession of marijuana and drug paraphernalia resulted in his being fined and entered into a pre-trial diversion program. He successfully completed the program in December 2011, and the charge was dismissed. Applicant has abstained from marijuana use since 2011, and avoided any subsequent participation in any criminal activity. While he continues to consume alcohol, he does so responsibly, and avoids drinking and driving. Applicant's former criminal behavior is unlikely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct 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 information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes conditions that could raise security concerns. Under AG ¶ 16(c), security concerns may be raised when there is:

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 the person may not properly safeguard protected information.

AG ¶ 16(e) may apply where there is: *personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .*

There is no evidence of a failure by Applicant to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The SOR allegation focuses solely on Applicant's alcohol-related incident, his possession of drug paraphernalia, and his use of marijuana while possessing a security clearance. AG ¶ 16(c) has not been established because the credible adverse information in at least one of the adjudicative issue areas is sufficient for an adverse determination under another single guideline. AG ¶ 16(e) has been established solely because of his personal conduct as it pertains to the marijuana issues.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if *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.* Under AG ¶ 17(d), personal conduct concerns may also be mitigated where *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.*

As to Applicant's alcohol-related incident, AG ¶¶ 17(c) and 17(d) apply. As to Applicant's use of marijuana and his possession of drug paraphernalia while possessing a security clearance, AG ¶ 17(c) does not apply, and AG ¶ 17(d) minimally applies. One drink in Bahrain may be sufficient grounds for a "drunken driving arrest." While there is no evidence that Applicant was, in fact, impaired or intoxicated, under the law as it existed, Applicant was considered to be driving under the influence. Applicant attended the AA sessions required by his employer. Applicant has never received any medical

treatment or counseling related to the consumption of alcohol, and he has never been evaluated or diagnosed for alcohol abuse or dependence. Applicant still consumes alcohol responsibly, and now avoids drinking and driving. When he drinks alcohol, he either takes a taxi or is driven by friends. He denies drinking to intoxication. Applicant has furnished substantial evidence of positive actions taken regarding his consumption of alcohol that enables me to conclude that his isolated alcohol-related behavior has been put behind him and will not recur.

Applicant's use of marijuana and his possession of drug paraphernalia while possessing a security clearance pose a more significant hurdle for Applicant to overcome. He knew he was violating both federal law and his fiduciary responsibilities when he resorted to using marijuana, but it apparently did not matter for he did so on several occasions until the police cited him. He no longer intends to use marijuana in the future, and he does not associate with other substance abusers. However, Applicant has never received any medical treatment, education, or counseling related to the substance abuse, and he remains significantly unaware as to his true motivation for turning to marijuana use. Without that knowledge, it is difficult to conclude that such inappropriate and illegal behavior is unlikely to recur.

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(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. I have incorporated my comments under Guidelines G, H, J, and E, in my analysis below.

There is some mitigating evidence under the whole-person concept. Applicant has never been evaluated or diagnosed for alcohol abuse or dependence. He did attend three AA sessions required by his employer. Applicant still consumes alcohol responsibly, and now avoids drinking and driving. After consuming alcohol, he either takes a taxi or is driven by friends. He denies drinking to intoxication. Applicant's two-and-one-quarter years of responsible alcohol consumption is viewed favorably. Applicant has furnished substantial evidence of positive actions taken regarding his

consumption of alcohol that enables me to conclude that his isolated alcohol-related behavior has been put behind him and will not recur. Applicant's abuse of marijuana abuse ceased when he was cited by the police two-and-one-quarter years ago. Applicant's abstinence is viewed favorably, and he should be encouraged to continue it. He no longer associates with other substance abusers.

There is also more substantial evidence supporting the security concerns. Applicant used marijuana and possessed drug paraphernalia while possessing a security clearance. He knew he was violating both federal law and his fiduciary responsibilities when he resorted to using marijuana, but it apparently did not matter for he did so on several occasions until the police cited him. He never received any medical treatment, education, or counseling related to his substance abuse. Applicant was also cited for driving under the influence in Bahrain.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴⁶ Overall, the record evidence leaves me with some questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the alcohol consumption and criminal conduct security concerns, but failed to mitigate the drug involvement and personal conduct security concerns. (See AG ¶¶ 2(a)(1) - 2(a)(9).)

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated and overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

⁴⁶ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge