



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



In the matter of:

)  
)  
)  
)  
)

ISCR Case No. 15-07298

Applicant for Security Clearance

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

08/16/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant used marijuana on multiple occasions from 2008 to November 2016 while holding a security clearance. He was arrested three times for driving under the influence of alcohol (DUI) from 1984 to 2013, and he continues to drink alcohol to intoxication about twice a week. Applicant failed to disclose his marijuana use and two of his DUIs on his December 19, 2014 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA); however, he made prompt voluntary disclosures during his Office of Personnel Management personal subject interview (OPM PSI). Personal conduct security concerns are mitigated; however, drug involvement and alcohol consumption security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 7, 2007, and December 19, 2014, Applicant completed and signed SCAs. (Government Exhibits 1 and 2) On December 5, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines H (drug involvement), G (alcohol consumption), and E (personal conduct).

On January 23, 2016, Applicant provided a response to the SOR, and on February 10, 2017, Department Counsel requested a hearing. (Transcript (Tr.) 12) On March 31, 2016, Department Counsel was ready to proceed. On April 24, 2017, the case was assigned to me. On April 24, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for May 4, 2017. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 14-15) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 12, 17; GE 1-5) On May 15, 2017, DOHA received a copy of the hearing transcript.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.b, 2.a, 2.b, 2.c, 3.a, and 3.b. (HE 3) He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 59 years old, and he has been employed by a DOD contractor or by DOD for 28 years. (Tr. 6, 19) His current title is senior mechanic. (Tr. 19) In 1975, he graduated from high school, and in 1989, he received an associate's degree in electronics engineering. (Tr. 6-7) He served in the Navy from 1978 to 1987 with a brief break in service, and he received an honorable discharge. (Tr. 8-9) In 1991, he married, and in 1999, he divorced. (Tr. 7) His children are ages 19 and 23. (Tr. 7) He has held a security

---

<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

clearance from about 2007 to 2017 and when he was in the Navy. (Tr. 21-22) There is no evidence of security violations.

## **Drug Involvement**

Applicant used marijuana from about 2007 to about November 2016 with his girlfriend on about a monthly basis because she wanted him to use marijuana with her. (Tr. 23-28, 33-34, 46) He has not used marijuana after receipt of the SOR. (Tr. 46)

## **Alcohol Consumption**

In 1984, Applicant was arrested for driving under the influence of alcohol (DUI) when he was in the Navy. (Tr. 34-35) He received alcohol-related counseling, and he completed probation and community service. (Tr. 35)

In 2009, Applicant was arrested for DUI. (Tr. 36) He attended an alcohol-education course. (Tr. 36, 42) He paid a fine; his driver's license was suspended for 30 days; and he received an expungement of his record. (Tr. 36)

In November 2013, Applicant was arrested for DUI. (Tr. 37) His breathalyzer test was .11 or .12. (Tr. 38)<sup>3</sup> He was convicted of DUI. (Tr. 38) He consumes beer every day, and he becomes intoxicated "maybe twice a week." (Tr. 39) He becomes intoxicated after drinking three beers and two shots of whiskey. (Tr. 40) He attended an alcohol education class after the November 2013 DUI. (Tr. 41, 42)

After Applicant was divorced he went on a three-day alcohol binge. (Tr. 43) After the binge, he was hospitalized for five days for stress and excessive alcohol consumption. (Tr. 44) When he drinks alcohol away from home, he intends to stop drinking and wait until he believes he is sufficiently sober to drive home. (Tr. 48-49)

## **Personal Conduct**

Applicant did not disclose marijuana use on his June 6, 2007 SCA. (GE 2) He was unclear about when he began using marijuana with his girlfriend, and the record does not establish he provided false information on his June 6, 2007 SCA when he denied illegal drug use in the previous seven years.

On his December 19, 2014 SCA, Applicant denied that he used marijuana in the previous seven years, and he denied using marijuana while holding a security clearance. (Tr. 31-32; GE 1) At the time he failed to disclose his marijuana use on his SCA, he was thinking his marijuana use was infrequent, and his frequency of marijuana use was not high enough to necessitate disclosure. (Tr. 45)

---

<sup>3</sup> In his December 19, 2014 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA), Applicant said his breathalyzer result was .16. (GE 1) He disclosed the 1984 DUI on his June 6, 2007 SCA. (GE 2)

Applicant's December 19, 2014 SCA asked about DUIs. (GE 1) He did not disclose his 1984 DUI because it was almost 30 years ago, and he did not disclose his 2009 DUI because of the expungement of his record. (Tr. 36-37, 44) He did not notice the requirement in his SCA to list expunged offenses. (Tr. 44-45) He disclosed the November 2013 DUI on his SCA. (Tr. 37)

During his April 21, 2015 OPM PSI, Applicant volunteered that he was arrested for DUI in 2009; however, he did not volunteer information about his 1984 DUI.<sup>4</sup> He noted that he consumed one 32-ounce beer, three whiskey shots, and three 12-ounce beers over a five-hour period on April 5, 2015. He volunteered that he smoked marijuana two weeks before his OPM PSI. (GE 3) He also volunteered that he smoked marijuana on a monthly basis with his girlfriend, and he intended not to use marijuana in the future. DOHA provided a copy of the OPM PSI to Applicant, and he provided some corrections. He did not make any corrections to the portions related to his alcohol or marijuana use.

Applicant said he is reliable and trustworthy. (Tr. 50) He has learned from his mistakes. (Tr. 50) He did not intend to deceive the Government on his SCA. (Tr. 50)

### **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." *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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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

---

<sup>4</sup> The source for all of the information in this paragraph is Applicant's April 21, 2015 Office of Personnel Management personal subject interview. (GE 3)

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.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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*, 484 U.S. at 531. “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. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Drug Involvement**

AG ¶ 24 articulates the security concern for drug involvement:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Controlled substance means any “controlled substance” as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 provides three conditions that could raise a security concern and may be disqualifying in this case: “(a) any substance misuse (see above definition);” “(c) illegal possession of a controlled substance . . . ;” and “(f) any illegal drug use while granted access to classified information or holding a sensitive position.”

Applicant's SOR response, OPM PSI, and hearing record establish Applicant possessed and used marijuana<sup>5</sup> on numerous occasions while holding a security clearance. AG ¶¶ 25(a), 25(c), and 25(f) are established.

AG ¶ 26 details 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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

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

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access

---

<sup>5</sup> Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule (Sch.) I controlled substances. See Drug Enforcement Administration listing at [http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308\\_11.htm](http://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm). See also *Gonzales v. Raish*, 545 U.S. 1 (2005) (discussing placement of marijuana on Schedule I).

to classified information will be resolved in favor of the national security.”  
Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 26(a) can mitigate security concerns when drug offenses are not recent. There are no “bright line” rules for determining when such conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). 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.”<sup>6</sup>

There is no evidence of Applicant’s marijuana use after November 2016. AG ¶ 26(a) does not apply because his marijuana possession and use is recent.

AG ¶¶ 26(b), 26(c), and 26(d) are not fully applicable. Applicant did not abuse drugs after being issued a prescription that is lawful under federal law. Marijuana was never lawfully prescribed for him under federal law. He said he ended his association with his drug-using girlfriend; however, that relationship ended within the previous year.

---

<sup>6</sup> ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

*Compare* ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant’s last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant’s efforts at alcohol rehabilitation.”) (citation format corrections added).

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

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

In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

None of the mitigating conditions fully apply. Applicant used marijuana from about 2007 to about November 2016 with his girlfriend on about a monthly basis because she wanted him to use marijuana with her. He has not used marijuana after receipt of the SOR. He held a security clearance from 2007 to November 2016. Drug involvement security concerns are not mitigated.

## **Alcohol Consumption**

AG ¶ 21 described 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 lists two conditions that could raise a security concern and may be disqualifying in this case: “(a) alcohol-related incidents away from work, such as driving while under the influence . . . regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder;” and “(c) habitual or binge consumption<sup>7</sup> of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.”

An Administrative “Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.” ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

AG ¶¶ 22(a) and 22(c) apply. Applicant’s has three DUI arrests. When Applicant was arrested in November 2013, his breathalyzer test was at least .11 or .12, establishing that he engaged in binge-alcohol consumption to the extent of impaired judgment. He also described binge alcohol consumption to the OPM investigator in 2015 and at his hearing.

AG ¶ 23 provides four conditions that could mitigate security concerns including:

(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;

---

<sup>7</sup> Although the term “binge” drinking is not defined in the Adjudicative Guidelines, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>. “Binge drinking is the most common pattern of excessive alcohol use in the United States.” See the Center for Disease Control website, (stating “The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person’s blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours.”), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>.



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

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

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

None of the mitigating conditions fully apply. Applicant was arrested for DUI in 1984, 2009, and November 2013. After each DUI, he received education about alcohol use. He noted that he consumed one 32-ounce beer, three whiskey shots, and three 12-ounce beers over a five-hour period on April 5, 2015. He consumes beer every day, and he becomes intoxicated “maybe twice a week.” He becomes intoxicated after drinking three beers and two shots of whiskey. When he drinks alcohol away from home, he intends to stop drinking and wait until he believes he is sufficiently sober to drive home. He is not currently participating in an alcohol counseling or treatment program. Additional DUIs and alcohol-related problems are likely to occur and continue to cast doubt on Applicant’s current reliability, trustworthiness, or judgment. Alcohol consumption security concerns are not mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case, “(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . .”<sup>8</sup> Applicant admitted that

---

<sup>8</sup> The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the

he failed to disclose his history of marijuana use while holding a security clearance on his December 19, 2014 SCA. He also admitted that he failed to disclose his DUIs in 1984 and 2009 on this same SCA. He was unclear about when he began using marijuana with his girlfriend, and the record does not establish he provided false information on his June 6, 2007 SCA. AG ¶ 16(a) is established with respect to his omissions on his December 19, 2014 SCA.

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . ; (3) a pattern of . . . rule violations; and

(e) personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶¶ 3.e, 3.f, and 3.g cross-allege under the personal conduct guideline the same conduct alleged under the drug involvement and alcohol consumption guidelines. All of Applicant's conduct causing a security concern in SOR ¶¶ 3.e, 3.f, and 3.g is explicitly covered under Guidelines H and G, and that conduct is sufficient to warrant revocation of his security clearance under those guidelines. AG ¶¶ 16(c) and 16(d) do not apply. Applicant's involvement with marijuana and excessive alcohol consumption affects his professional and community standing. However, this conduct does not create a vulnerability to exploitation, manipulation, or duress because security officials are aware of it. AG ¶ 16(e) is not established. Guidelines H, G, and E address identical issues

---

omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

involving judgment, trustworthiness, and reliability. Guideline E concerns constitute a duplication of the concerns under Guidelines H and G, and accordingly, personal conduct security concerns in SOR ¶¶ 3.e, 3.f, and 3.g are found for Applicant.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶ 17(a) applies to his failure to disclose his history of marijuana use on his SCA. The evidence that he used marijuana was first disclosed on his April 21, 2015 OPM PSI. He disclosed continuing marijuana use until two weeks before his OPM PSI. The purpose of AG ¶ 17(a) is to encourage disclosure. He also volunteered in his OPM PSI information about his history of excessive alcohol consumption and his 2009 DUI. He was candid and frank on his April 21, 2015 OPM PSI. Personal conduct security concerns are mitigated.

## Whole-Person Concept

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he 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. My comments under Guidelines H, G, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 59 years old, and he has been employed for a DOD contractor or for DOD for 28 years. His current title is senior mechanic. In 1989, he received an associate's degree in electronics engineering. He served in the Navy from 1978 to 1987 with a brief break in service, and he received an honorable discharge. He has held a security clearance from about 2007 to 2017 and when he was in the Navy. There is no evidence of security violations.

Applicant used marijuana on multiple occasions from 2008 to November 2016 while holding a security clearance. His marijuana abuse "raises questions about [his] ability or willingness to comply with laws, rules, and regulations." See AG ¶ 24. He was arrested three times for DUI, and he continues to drink alcohol to intoxication about twice a week. "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses" and raises "questions about [his] reliability and trustworthiness." See AG ¶ 21.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Personal conduct security concerns are mitigated. Drug involvement and alcohol consumption security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant security clearance eligibility at this time.

### **Formal Findings**

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a through 3.g:	For Applicant

### **Conclusion**

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

---

Mark Harvey  
Administrative Judge