



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



In the matter of:

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 17-03554

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

06/26/2018

---

**Decision**

---

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline G (alcohol consumption), Guideline H (drug involvement and substance misuse), and Guideline E (personal conduct). Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

On October 30, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G, H, and E. Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on February 9, 2018. Applicant received the FORM on February 14, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided no response to the FORM. The Government's evidence, identified as Items 1 through 13, is admitted without objection. The case was assigned to me on June 8, 2018.

## Findings of Fact<sup>1</sup>

Applicant is 30 years old. He graduated from high school in 2004 and has been employed as a technician by a federal contractor since May 2011. Applicant reports no military service, and he has never married. He rents space in his grandparents' home, and he has lived with a co-habitant since 2010. Applicant has held a previous security clearance since June 2013, but his sensitive compartmented information (SCI) access was denied in December 2015 by another government agency (OGA).

On June 30, 2016, Applicant completed a Security Clearance Application (SCA), and in section 22 (police record) he disclosed several arrests including a DUI and possession of marijuana (MJ) arrest in February 2006, and another DUI arrest in June 2016.<sup>2</sup> These two arrests are alleged in SOR ¶¶ 1.a and 1.d respectively. In his December 2017 Answer to the SOR, Applicant admitted to these allegations, and to the court-ordered substance abuse counseling following both arrests alleged at SOR ¶¶ 1.b and 1.e. Applicant also admitted that he was evaluated by OGA's psychological services and diagnosed with severe alcohol use disorder in April 2015, with a recommendation to abstain totally from alcohol use as alleged in SOR ¶ 1.c. He denied that he continues to consume alcohol nonetheless, as alleged in SOR ¶ 1.g, contending that he has been sober since September 16, 2017.

In his Answer to the SOR, Applicant also admitted to the allegations in SOR ¶¶ 2.a through 2.h, that he used a panoply of illegal drugs, including MJ and prescription drugs that were not prescribed to Applicant, between 2001 and 2011. In his Personal Subject Interview (PSI) of June 2017, Applicant explained that on the evening of his February 2016 DUI arrest, he consumed five beers and two shots of whiskey over a roughly four hour period.<sup>3</sup> He forgot that he was on-call for his job, and when he drove away from the pub, he neglected to turn on his headlights. He was stopped by police and blew .19 blood alcohol content (BAC) on a breathalyzer test. Previously, Applicant stated he had consumed alcohol daily, including about a half pint of whiskey, and one or two beers. He attended 16 weeks of court-ordered alcohol education courses and alcoholics anonymous (AA) meetings, but claims he was never told to abstain.<sup>4</sup>

In his earlier July 25, 2016, PSI, Applicant stated that he had ingested a 12-pack of light beers before his February 2016 DUI arrest.<sup>5</sup> He explained that he typically drank

---

<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's June 30, 2016 Security Clearance Application (SCA) (Item 3) and his summaries of clearance interviews by background investigators dated December 23, 2011 (item 7); July 25, 2016 (item 6); and June 27, 2017 (Item 5).

<sup>2</sup> Item 3.

<sup>3</sup> Item 5.

<sup>4</sup> Item 5.

<sup>5</sup> Item 6.

12 - 15 beers on weekends, and whiskey twice a week, or one pint on weekends. He claimed to have a high tolerance for alcohol preceding the 2016 DUI arrest. Since then, he has abstained from drinking.<sup>6</sup> However, in his answers to interrogatories signed on June 13, 2017, Applicant stated he had four beers as recently as May 25, 2017.<sup>7</sup> All of his admissions are adopted here as findings of fact including his two DUI arrests; 2006 court-ordered alcohol treatment consisting of 26 weeks of group counseling, and 16 weeks of alcohol education and AA meetings, following his 2016 arrest.

In an April 2014 psychological consultation with OGA services, Applicant was diagnosed with severe alcohol abuse disorder.<sup>8</sup> Nonetheless, he continued to drink as of May 25, 2017.<sup>9</sup> The report of that consultation noted that Applicant misused prescription medications including opiates for back pain and to feel good. "He has driven while intoxicated 20 – 25 times including 2 – 3 times during the past year. . . . He meets DSM-5 criteria for Alcohol Use Disorder (AUD). . . . [Applicant's] total of six symptoms places his AUD in the 'severe' category. . . he poses an elevated risk for lapses in judgment and unreliability associated with his pattern of excessive alcohol consumption. The present evaluation found that he has a distant history of rule-breaking."<sup>10</sup> The primary recommendation of his 2014 psychological consult was that Applicant abstain totally from alcohol and complete a refresher outpatient addiction program.

On April 18, 2016, OGA's decision to deny Applicant's SCI access was finalized<sup>11</sup> and a Clearance Decision Statement was attached. It noted that Applicant spent approximately \$50 per week purchasing MJ from 2002 – 2009, and he smoked MJ up until May 2011.<sup>12</sup> Applicant used Percocet pills in order to get high approximately ten times between 2001 and 2004; he took ecstasy once in the summer of 2004; cocaine on several occasions; mushrooms twice; and he engaged in heavy drinking from age 15. Applicant also admitted in his Answer to the SOR the allegation under Guideline E (personal conduct) at SOR ¶ 3.a, including that he continues to consume alcohol, in his Answer to the SOR. This contradicts his assertion in denying the SOR allegation at ¶ 1.g that he has been alcohol free since September 16, 2017.

---

<sup>6</sup> Item 6.

<sup>7</sup> Item 12.

<sup>8</sup> Item 9.

<sup>9</sup> Items 9 and 12.

<sup>10</sup> Item 9.

<sup>11</sup> Item 8.

<sup>12</sup> Item 9.

## Policies

DOD took action in this case under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AGs) implemented by DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

## **Analysis**

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

The security concern 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 several conditions that could raise security concerns under AG ¶ 22. The following is potentially applicable in this case:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) the failure to follow treatment advice once diagnosed; and,
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant had a DUI arrest and alcohol education counselling in 2006, and again in 2016. In 2014, he was informed that he was diagnosed with severe alcohol use disorder. Nonetheless, Applicant disclosed that he continued to drink alcohol as recently as May 2017. He disclosed some of his transgressions in his SCA, and during the OGA psychological consultation, and he has admitted them in his Answer to the SOR. AG ¶ ¶ 22(a) through (f) are applicable.

AG ¶ 23 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; 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.

Applicant's last alcohol-related incident was in February 2016. He has completed treatment twice, attended AA meetings, and lost his SCI access. Yet, he continues to use alcohol. Applicant has provided inconsistent statements about his 2018 DUI arrest and his current alcohol consumption. Applicant has not confronted his longstanding condition and effectively coped with his diagnosis of severe AUD. Applicant has not met his burden in establishing that sufficient time has elapsed since his last alcohol-related event, and he has not taken responsible measures to insure that it never happens again. The above-mentioned mitigating conditions do not apply.

#### **Guideline H, Drug Involvement and Substance Misuse**

¶ 24: The security concern for drug involvement and substance misuse is set out in AG

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.

¶ 25. The guideline notes several conditions that could raise security concerns under AG. The following are potentially applicable in this case:

(a) any substance misuse (see above definition);

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

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant purchased and used MJ daily for most of a decade. He also was arrested for possession of MJ in 2006, and continued to use it. Additionally, Applicant used a remarkable assortment of illegal narcotics, recreational drugs, and non-prescribed medications from 2001 to 2011. He also engaged in heavy drinking during this time period. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(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.

Applicant has provided evidence of completion of alcohol counseling and substance abuse-courses and attendance at AA meetings, but no favorable prognosis from a medical professional. He used MJ daily for almost ten years. He has abstained from drug use since 2011. However, he did not provide any evidence that he has disassociated from friends who use illegal drugs, or any letter of intent to abstain in the future. He continued his heavy drinking until his February 2016 DUI. Applicant appears to be sincere in his intent to abstain going forward, but that is insufficient to mitigate his well-established pattern of rampant illegal-drug use. His conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 26(a) and AG ¶ 26(b) are only partially applicable.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

The Concern. 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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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 information. This includes but is not limited to, considerations of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized - - release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources; and

Applicant has admitted to using MJ for almost ten years, getting arrested for possession of MJ, and driving drunk while he possessed a security clearance. He was also found guilty of a later DUI in 2016, even after his OGA psychological consult informed him of his diagnosis of severe AUD and his loss of SCI access. This conduct conveys an inability to refrain from alcohol abuse, and conform his conduct to the requirements of the law. Applicant has a long established pattern of violating laws and rules concerning drug and alcohol use. AG ¶ 16 (d) applies. So, the focus shifts to a determination of which, if any of the mitigating conditions apply.

Under AG ¶ 17, conditions that could potentially mitigate security concerns include:



(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; and

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

My analyses above under adjudicative guidelines G and H are the same under this adjudicative guideline E, and are herein incorporated by reference. Applicant has completed two substance-abuse courses and had counselling through attendance at AA meetings. While AG ¶¶ 17(c),(d) and (e) may have some applicability, they are not enough to overcome Applicant's well-established pattern of violating the law and ignoring rules, such as when he drove drunk while possessing a security clearance, and he continues to drink after being diagnosed with AUD in 2014.

### **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), 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G, H and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Notably, Applicant has worked over seven

years for a federal contractor directly supporting DOD's mission, and he held a security clearance since 2013. He has completed substance-abuse courses and counseling. Most importantly, Applicant did not resolve the specific violations alleged in the SOR, and he has not unequivocally declared his intention to refrain from further use of illegal drugs.

Applicant's prolific drug involvement and continuing alcohol misuse remain security concerns. These offenses were not minor or infrequent, and they were not committed under such unusual circumstances that they are unlikely to recur. There is insufficient evidence to conclude that Applicant has acknowledged the egregiousness of his drug involvement or taken steps to alleviate the stressors or circumstances that contribute to his alcohol consumption to insure that such behavior does not recur. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guidelines G, H and E.

### **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 through 1.g:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.h:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

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

---

Robert J. Kilmartin  
Administrative Judge