



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17:03853

Appearances

For Government: Nicholas T. Temple, Esquire, Department Counsel

For Applicant: *Pro se*

07/26/2018

Decision

LYNCH, Noreen A., Administrative Judge:

On April 20, 2017, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On December 21, 2017, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Misuse); and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines.

Applicant acknowledged receipt of the SOR, and answered the SOR on January 18, 2018. (Item (2) He requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 22, 2018. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 9. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's

evidence. He received the FORM on March 6, 2018, and did not respond. Items 1 through 9 are admitted into evidence. The case was assigned to me on June 21, 2018.

On June 8, 2017, the DOD implemented new AG.¹

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations under Guideline G, in Paragraph 1 of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

The SOR alleged arrests for alcohol driving incidents in October 1981; May 1996; and March 2000. It further alleged treatment from October 2007 to February 2008 for drug and alcohol abuse; treatment from May 2012 to June 2012 for alcohol abuse; treatment in May 2014 for alcohol abuse; treatment from September 2014 to October 2014 for alcohol abuse and alcohol dependence; an arrest for driving under the influence, leaving the scene of an accident, and refusal to submit to a chemical test in March 2017; and treatment from March 2017 to May 2017 for alcohol abuse and alcohol dependence. Applicant admitted all the allegations, with specific explanations.

Applicant is 60 years old, divorced, and has three sons. He graduated from high school in 1975. He has worked as a material tech aide since December 1989. (Item 3) He held a confidential clearance in 1995, which was upgraded to a secret clearance in October 2001. He was denied a clearance in 2009. (Item 9) In 2012, he successfully reapplied for a security clearance.

Alcohol

Applicant admitted the SOR allegation in 1.a about the arrest in October 1981 and charge of driving while intoxicated (DWI). There is no information in the file concerning the disposition. As to the SOR allegation in 1.b about the 1996 arrest and charge for driving under the influence (DUI), Applicant disclosed in his e-QIP that he lost his license for three months and was fined. (Item 3, 8) As to SOR 1.c, Applicant disclosed that in 2000 he was charged with driving while intoxicated, lost his license for one year and received one year probation. (Item 2)

Applicant admitted that he received and completed treatment at Phoenix House in October 2007 to February 2008 (court ordered) for alcohol abuse and drug abuse (1.d). There are no reports in the record from the 2007 treatment provider. Although, the treatment for alcohol abuse at Stonington Institute in May 2012 to June 2012 and May

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a “single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.” (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

2014 are acknowledged, and there are discharge summaries in the file (1.e and 1.f). Applicant stated that he entered the programs voluntarily. (Item 2) The clinical discharge summary from September to October 2014 reveals a voluntary referral after a June 2014 incident.² (1.g) The diagnosis was alcohol dependence with anxiety and depression. (Item 4) He completed the program and was referred to self-help groups.

In March 2017, Applicant was charged and arrested for driving under the influence, leaving the scene of an accident, and refusal to submit to a chemical test. 1.h) The incident occurred when he had taken prescribed Tylenol with codeine syrup by his physician. He took the medicine, but when he returned home, he began drinking vodka. He continued to drink and take the codeine and he blacked out. He drove his car and hit a telephone pole while under the influence. (Item 4). He was arrested, but the charge was reduced to reckless driving. The charge of leaving the scene of the accident and refusal to take a chemical test was dismissed. (Item 6)

Applicant voluntarily attended Stonington Institute treatment program from March 2017 to May 2017 for alcohol abuse and alcohol dependence (Item 2, attachment). The 2017 report from Stonington states that Applicant was in treatment for the purpose of addressing his substance abuse and related issues. The date of admission was March 28, 2017 to May 1, 2017. He resided in a sober off-campus inpatient living environment. The clients are under supervision at all times and routinely tested for illicit substances. He attended daily therapy, anger management, and stress management. He was introduced to the AA program. Applicant was an active participant in the group setting and a model client in the off campus housing. (Item 2, attachment) He demonstrated a willingness to remain abstinent. The report was not specific as to treatment for drugs versus alcohol.

In his recent e-QIP, Applicant described an event, dated June 2014, when he was on a motorcycle, left his bike to get someone to take it home. According to the docket sheet in the record, this charge was dismissed. (Item 6) The same type of incident was described for the March 15, 2017 incident described above. Applicant stated that he made a \$300 donation to a local charity. The record is confusing as to the March and June 2017 incidents and leaving the scene of an accident. Applicant listed both the March 2017 and June 2014 incidents on his SCA. (Item 3).

In his answer to 2017 DOHA interrogatories, Applicant acknowledged that he has been diagnosed as alcohol dependent. He does not participate in AA. He also indicated that he has made no changes in his personal life that might indicate a change from his former lifestyle. (Item 4) As to an explanation for the March 2017 incident, he stated in his interrogatories that he realizes that he has checked himself into detox programs on four separate occasions and none of them have had a lasting impact. Since 2010, he admits that his drinking became excessive to the point of the last accident. He stated that he was stressed due to the possibility of losing his job. (Item 4)

² The June 2014 incident, although not specifically referenced in the SOR, was disclosed by Applicant in his SCA and in his 2017 investigative interview. (Item 4, 6)

In the 2017 subject interview, it was reported that in the last seven years alcohol has had a negative effect on Applicant's work performance and professional and personal relationships. (Item 4) In contrast to Applicant's 2017 interrogatory answers, the interview stated that subject has been sober since March 2017, and has completed alcohol treatment programs on his own free will. He took advantage of every alcohol class. (Item 4)

Applicant submitted a letter, dated December 14, 2017 from his counselor, who advised that Applicant has been referred for detox and residential placement about three times in the past seven years. She also noted that she has seen Applicant for wellness counseling since February 2010. The counselor specifically refers to Applicant's concern about his use of alcohol and not drugs. (Item 4) She noted that he has long periods of sobriety and has followed recommendations in the past. However, the March incident in 2017 occurred as a result of using prescribed Tylenol with codeine and drinking. (Item 4))

Substance Abuse and Misuse of Prescription

The SOR under Guideline H, SOR 2.a through 2.e alleges drug treatment, using marijuana from 1975 to 1981; an arrest of marijuana in September 1981 with possession of marijuana and cocaine from 1980 to October 2006 and felony arrest for cocaine. Applicant admitted all the SOR allegations. These are drug related incidents, with the exception of 2.f that have already been investigated in detail and adjudicated in a 2009 DOHA decision that was not favorable to Applicant. (Item 9) They reflect a continuing pattern of substance abuse that is compounded by the most recent misuse of prescription medication with alcohol. (Item 9) The incident alleged in SOR 2.f arises from the same incident as the alcohol incident of March 2017 with alcohol as described above in 1.h. In that incident Applicant had bronchitis and mixed the Tylenol and codeine with alcohol. The medication was prescribed. (Item 4)

The 2017 subject interview also states that in the last seven years, Applicant has illegally misused a prescription drug and then drove after drinking alcohol when he had blacked out. He has had some treatment for drug abuse, but has not been diagnosed as drug dependent. The 2017 interview also states that the last cocaine incident was discussed in detail and adjudicated in the ISCR decision in March 2009. (Item 9)

Personal Conduct

The personal conduct allegations are cross referenced under Guideline G and Guideline H. They have been discussed in this decision and a 2009 decision. The 3.b allegation of the June 2014 leaving the scene of an accident was discussed under Guideline G with the alcohol involvement, but warrants a separate discussion.

Applicant disclosed on his recent e-QIP that in June 2014, shortly after a treatment discharge, he left the site of a single-vehicle motorcycle accident. The

charge was dismissed. Applicant returned for another eight-day detox two months after his arrest. (Item 4)

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

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 at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may apply:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (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 has four alcohol-related incidents between 1981 and 2017. He has been diagnosed as alcohol dependent. He attended alcohol treatment programs and still consumes alcohol. His last incident was one year ago. All the disqualifying conditions apply.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

- (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.

Despite the number of times Applicant completed alcohol treatment programs, his latest incident of alcohol was in June 2017, when he had blacked out and drove his car after drinking.. He does not attend AA and there is no clear pattern of modified consumption. He has relapsed at least five times in three years. He has a long-standing history of abusing alcohol. He received a diagnosis of alcohol dependence and has sought treatment. However, he has relapsed several times. Under these circumstances none of the mitigating conditions apply.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

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

The guideline at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

(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

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

Applicant's history of drug use has been documented and adjudicated in a March 2009 ISCR decision. He had a security clearance for his job at that time. The misuse of the Tylenol with codeine combined with the alcohol use and driving resulted in the March 2017 incident which has been fully discussed above. Therefore, AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

None of the mitigating conditions apply.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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

clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged long history of alcohol and drug use, the following disqualifying condition could apply:

AG ¶ 16 (c):credible adverse information in several adjudicative issue areas that I find 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.

In this instance, allegation 3.a cross referenced the allegations under alcohol and drug use. SOR allegation 3.b states that Applicant was arrested in June 2014 and charged with leaving the scene of the accident. The single vehicle motorcycle accident occurred after his May 2014 discharge from treatment. Given these facts, I find substantial evidence of questionable judgment and reliability. Therefore, AG ¶ 16(c) is established.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

(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; and

(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.

None of the mitigating conditions apply as the incident occurred in 2014 and in 2017, Applicant again left the scene of an accident.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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. Applicant has a long history of alcohol incidents that resulted in arrests and charges. He has gone to several treatment facilities in the past, made some progress with sobriety, but has not been successful. Despite Applicant's good intentions, he drank alcohol while taking Tylenol in codeine in 2017. He blacked out and was involved in an accident. Given his long history of alcohol and drug use, there is nothing to foster a belief in Applicant's current reliability, trustworthiness, or good judgment by either of the alleged security concerns. My comments regarding each guideline are incorporated here also.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his alcohol consumption, drug involvement and substance abuse, and personal conduct.

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a-i:	Against Applicant
Paragraph 2, Guideline H:	AGAINST Applicant
Subparagraphs 2.a-f:	Against Applicant
Paragraph 3, Guideline E:	AGAINST Applicant
Subparagraphs 3.a--b:	Against Applicant

Conclusion

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

Noreen A. Lynch
Administrative Judge