



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



In the matter of:)
)
) ISCR Case No. 23-00303
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

02/18/2025

Decision

Hyams, Ross D., Administrative Judge:

Applicant mitigated the alcohol consumption, drug involvement and substance misuse, and criminal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 1, 2022. On September 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption), Guideline H (drug involvement and substance misuse), and Guideline J (criminal conduct). Applicant responded to the SOR on August 11, 2023, and requested a hearing before an administrative judge. The case was assigned to me on June 10, 2024.

The hearing was convened as scheduled on October 30, 2024. Department Counsel submitted Government Exhibits (GE) 1-8, which were admitted in evidence

without objection. Applicant's Exhibits (AE) A-M were admitted in evidence without objection.

Findings of Fact

In his answer, Applicant admitted all SOR allegations with explanation. His admissions are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 38 years old. He graduated high school in 2007 and has almost completed his bachelor's degree. He has worked for his current employer for about a year as an energy analyst. He was married from 2015-2017 and has no children. He served on active duty in the Navy from 2008-2018. In 2018, he was separated and given a general discharge under honorable conditions. While in the Navy, he received specialized training and was deployed twice. (Tr. 15-18; GE 1, 2; AE F)

The SOR alleged the following concerns under Guideline G:

SOR ¶ 1.a alleged Applicant consumed alcohol in excess from 2009-2021. He reported that when he was younger, he regularly drank socially, as it was part of the Navy culture, and would drink to intoxication once a month. He no longer associates with any of the people who were his social drinking friends. He rarely consumes alcohol now. His last drink was a glass of champagne at a wedding in 2024 and he did not drink at all for about five months prior. He no longer drinks to intoxication. (Tr. 19-88; GE 3)

SOR ¶ 1.b alleged in July 2021 Applicant was arrested for driving under the influence (DUI), pled no contest, and was found guilty. He served 12 months of probation. This allegation is also cross alleged under Guideline J in SOR ¶ 3.a. He reported that he drank with friends at a kickball game and then attempted to drive home, which was a mistake. He fell asleep at a red light going home. As part of his sentence, he attended a 12-week course by the State A Safety Council and attended 8-16 hours of a victim impact panel. He reported that the stories from the panel scared him into making changes in his life. He also attended a three-day substance abuse course prior to sentencing in his case. He successfully completed probation and has no prohibition on his driver's license. (Tr. 19-88; GE 7, 8; AE G, H, I)

SOR ¶ 1.c alleged in 2018, while serving in the Navy, Applicant plead guilty to DUI and fleeing the scene of an accident in August 2017. He was sentenced to 30 days confinement, reduction in rank, and a pay forfeiture for one month. This allegation is also cross alleged under Guideline J in SOR ¶ 3.a. He reported that he was convicted of UCMJ articles 111 and 134. He reported he was on probation for about a year after, and then was administratively separated from the Navy. (Tr. 19-84; GE 3, 4, 6; AE A, B)

SOR ¶ 1.d alleged in August 2017, Applicant was arrested and indicted in Country A for assault on a police officer, resisting arrest, criminal mischief, DUI, reckless driving, and disorderly conduct. These charges were dismissed because the case was

prosecuted by the Navy, as alleged in SOR ¶ 1.c. This allegation is also cross alleged under Guideline J in SOR ¶ 3.a. Applicant admitted drinking and driving, moving his car, and leaving the scene. He moved his car to a parking lot off the street and damaged a potted plant. A report stated that he ran from police, jumped a fence, and kicked them. He stated that his actions were stupid and due to intoxication. He asserted that he did not touch or assault the police officer, and the related charges were dismissed. (Tr. 19-38; GE 3, 4, 6; AE A, B)

SOR ¶ 1.e alleged in 2011, Applicant was ordered by the Navy to attend alcohol abuse counseling. In 2009, He was found to be intoxicated in the barracks, as alleged in SOR ¶ 1.f. He was ordered to take the training in 2009. However, because his unit was busy and he was deployed after the incident, he did not attend the counseling until 2011. The Prevent Course was a two-week program put on by the Navy (Tr. 19-88)

SOR ¶ 1.f alleged in 2009 Applicant violated a standing order when he returned to the barracks while intoxicated. He forfeited pay for two months and was placed on 30 days restriction. Applicant admitted the allegation. (Tr. 19-38; GE 6)

Applicant was 21 years old in 2009 and admits he was irresponsible with alcohol. His first substance abuse counseling was in 2011, and he attended counseling again after his arrest in 2021. He stated that the drinking culture in the Navy contributed to his irresponsible alcohol use. He has since left the Navy, moved to State B, and changed his life to be healthier and more mature. He has a better job that he appreciates and is surrounded by friends and colleagues who are professionals. After his 2017 arrest, he completely abstained from alcohol for nine months. He had been infrequently drinking after getting out of the Navy, but when the COVID-19 lockdowns took place in 2020, he drank with friends while at home in State A. (Tr. 19-91; AE G, H)

After Applicant's arrest in July 2021, he abstained from alcohol until May 2024. He now infrequently drinks any alcohol, and never drinks to intoxication. He does not have more than one or two alcohol drinks in total at a time. He reported having alcohol on two occasions in 2024. His last instance of intoxication was in 2021, when he was arrested. He realized he had a problem with alcohol in his youth and is careful with any use of alcohol now. He has never been diagnosed as an alcoholic or been told to completely abstain from alcohol. He agreed that he was a risk when he was younger but has moved beyond that phase of his life. (Tr. 19-91; AE G, H)

Since 2021, Applicant changed his life and is no longer involved in socializing with alcohol. His routine and lifestyle have greatly improved as he moved and took on more serious jobs and friends. He works out every morning and participates in sporting activities as his hobby. He is active and exercises often. His friends share his active and healthy lifestyle. He has learned from his mistakes. After his arrest in 2021, he asked his close friends and family members to help keep him accountable in living a healthy lifestyle. (Tr. 38-84)

The SOR alleged the following under Guideline H:

SOR ¶¶ 2.a and 2.b alleged Applicant purchased and used marijuana from September 2018 to September 2021. This allegation is also cross alleged under Guideline J in SOR ¶ 3.b. Applicant stated he was drug tested about three times a year while in the Navy. He did not use marijuana while he was in the Navy but tried it the day after he was discharged from service. He purchased from a dispensary in State C. He claimed at the time he was not aware of the distinction between state and federal law, and thought it was permissible because it was legal in State C. He reported that he used it once or twice a year during this time frame, and never more than ten times total. (Tr. 19-38; GE 1, 3)

SOR ¶ 2.c alleged Applicant used marijuana from September 2020 to September 2021 while granted access to classified information or holding a sensitive position. He reported the last time he used marijuana was at a music festival in June 2021. He has no future intent to use marijuana and did not enjoy the feeling. In his background interview with a government investigator, he was told that despite it being legal in some states and available for purchase to the public, it is illegal under federal law and prohibited for clearance holders. Applicant asserted that he now understands the prohibition under federal law and will not purchase or use it again. He states the fact it is legal and widely available in some states was confusing for him. (Tr. 38-84; GE 1, 3, 5)

SOR ¶ 2.d alleged Applicant was arrested in July 2021 in State A and charged with possession of THC. This allegation is also cross alleged under Guideline J in SOR ¶ 3.b. When Applicant was arrested for DUI, an old vape pen with THC oil was found deep in the console of his car. He claimed it had been in there unused for years. The assistant state attorney reviewed Applicant's case and found the marijuana charge was not suitable for prosecution, and the charge was dismissed. (Tr. 19-88; GE 7, 8; AE C)

Applicant signed a statement of intent to not abuse alcohol or use illegal drugs ever again. He submitted two character letters, which state he is an excellent and skilled employee who is reliable, and professional. He submitted his last performance review which showed that his performance exceeded expectations. He has been promoted twice at work since leaving the Navy. (AE D, E, K, L, M)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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 ¶ 21, 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 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

AG ¶ 21 details the personal conduct security concern:

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.

I have considered the disqualifying conditions for alcohol consumption under AG ¶ 22 and the following are applicable:

(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; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

I have considered the mitigating conditions under AG ¶ 23. 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; and

(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.

AG ¶¶ 23(a) and (b) apply. Applicant was irresponsible with alcohol when he was younger. He last intoxication and incident was in 2021, when he made a mistake to drive home after drinking at a kickball game. Afterwards, he realized he had to abstain from alcohol and live a healthier and more serious lifestyle. The counseling and education he attended as part of his sentence helped him better understand the severity and the changes he had to make. He has completely changed his relationship with alcohol and adopted a healthy lifestyle. He has established a professional focus and better friendships who hold him accountable. He provided sufficient evidence to find that enough time has passed, the behavior is unlikely to recur, and he has taken satisfactory actions to overcome his maladaptive use of alcohol and demonstrated a clear pattern of modified consumption. The incidents no longer cast doubt on his reliability, trustworthiness, and judgment. The alcohol consumption security concerns are mitigated.

Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are applicable:

- (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.

The Controlled Substances Act makes it illegal under federal law to manufacture, possess, or distribute certain drugs (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844). All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§811, 812. Marijuana is classified as a Schedule I controlled substance, under §812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment.

I have considered the mitigating conditions under AG ¶ 26. 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 is grounds for revocation of national security eligibility.

AG ¶¶ 26(a) and 26(b) apply. Applicant had limited marijuana use over a three-year period. From about September 2020 on he held a security clearance. He credibly stated that he was confused by the legality of marijuana under state laws and did not understand the federal prohibition. He was educated by his background investigator in October 2022. At that point, he had not used marijuana since June 2021, and has no

future intent to use it. These incidents occurred long ago under circumstances unlikely to recur, and it does not cast doubt on his current reliability, trustworthiness, and judgment. There is sufficient evidence to find he took action to overcome the problem and establish a pattern of abstinence. He moved, has better friendships now, and lives a healthier lifestyle. He signed a statement of intent to abstain from all drug involvement. The drug involvement and substance misuse security concerns are mitigated.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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 criminal conduct security concerns are cross alleged from Guidelines G and H. I have considered the disqualifying under AG ¶ 31 and the following are applicable in this case:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

I have considered the mitigating conditions under AG ¶ 32. The following are potentially applicable:

- (a) 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; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and (d) apply. Applicant's last alcohol-related arrest was in July 2021, and he has changed his relationship with alcohol, and has abstained from alcohol for long periods. Applicant last used marijuana in June 2021, and his use was limited over a three-year period. He mistakenly thought that since it was legal under state law, it was permissible. He now understands the federal law prohibition. He learned from the

substance abuse counseling and education he attended as part of his sentence. He provided sufficient evidence to find that enough time has passed, the behavior is unlikely to recur, and these incidents no longer cast doubt on his reliability, trustworthiness, and judgment. He provided sufficient evidence to find his lifestyle and habits have changed and he is rehabilitated. There has been sufficient passage of time, he successfully completed probation, and has an excellent record of employment. The criminal 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 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.

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 considered his character letters and performance evaluation. I have incorporated my comments under Guidelines G, H, and J in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has mitigated the alcohol consumption, drug involvement and substance misuse, and criminal conduct security concerns.

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:

FOR APPLICANT

Subparagraphs 1.a-1.f:

For Applicant

Paragraph 2, Guideline H: FOR APPLICANT

Subparagraphs 2.a-2.d: For Applicant

Paragraph 3, Guideline J: FOR APPLICANT

Subparagraphs 3.a-3.b: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge