



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



In the matter of:)
)
) ISCR Case No. 24-00236
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: Patrick K. Korody, Esq.

06/20/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

On March 12, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G, Guideline H, and Guideline E. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on March 29, 2024 (Answer), with explanations, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The hearing convened as scheduled on April 3, 2025. Department Counsel offered into evidence Government Exhibits (GX) 1-7. Applicant offered into evidence Applicant Exhibits (AX) A-G. All exhibits were admitted without objection. Applicant and three additional witnesses testified. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on April 10, 2025.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a, 1.b, and 2.b, and admitted, in part, allegations ¶¶ 2.a and 3.a. His admissions are incorporated into my findings of fact. After a thorough review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 49 years old. He married his first wife in 2003. They separated in 2009 and divorced in 2015. He has one adult-aged son from that relationship. He married his second wife in 2016, and they have two young children. (GX 1-4; Tr. 86-87)

Applicant began working with Company A, a federal contractor, in 2015. He underwent a background investigation for a security clearance in about 2016. He estimated that he obtained a security clearance by 2018. In about July 2021, he left Company A and began working for a federal agency. He submitted a security clearance application (SCA) in June 2022. Based on the issues discussed below, he was terminated from the federal agency in March 2023. In July 2023, he was rehired by Company A and is currently a technical project lead. (GX 1-4; AX F; Tr. 82-84, 107-110)

The SOR alleged that Applicant participated in an alcohol rehabilitation program in 2019 and was discharged from counseling in 2020 with a guarded prognosis. The SOR further alleged that he used marijuana in 2019, experienced a positive drug test shortly afterward, and intentionally failed to disclose that use during a background investigation.

Applicant detailed that, prior to his alcohol abuse, he had been addicted to narcotics. In about 2005, his first wife began to suffer from various medical ailments including cancer and was prescribed narcotics for pain management. Later that year, he began using his wife's narcotics and they both became addicted. In 2008, he enrolled in a two-week inpatient program for his narcotics addiction near his home in State A. He completed the program but experienced a brief period of relapse in 2009. His wife continued to abuse narcotics for an unspecified period afterwards, which was a leading factor in their marital separation. (GX 1-4; Tr. 87-91)

Applicant moved to State B to look for work and change his circumstances. By mid-2009, he had secured a job but slept in his car for several months while saving

money for a place to live. He began to frequent a local bar in the evenings, and his alcohol use increased. He met his second wife at the bar. (GX 1-4; Tr. 88-92)

Applicant's work and living circumstances improved over time, and he married his second wife in 2016. In about 2018, they moved to State C. However, he continued to consume alcohol in amounts that concerned his wife. Following the birth of their first child in 2018, Applicant's wife told him he needed to stop drinking. Instead, he began to hide his consumption of alcohol from her. In May 2019, she took their child and left, telling Applicant that she would not return until he sought treatment for his alcohol use. (GX 1-4; Tr. 92-96)

Applicant's alcohol consumption immediately increased. Living on his own, he began to frequent bars and spend time on the weekends at parties and other social events. In late May or early June 2019, while drinking at a social event, he tried marijuana for the first time. He recalled drinking heavily and smoking marijuana about half a dozen times through a July 4th celebration. On July 5, 2019, Applicant woke up at a different house and realized he needed help with his alcohol use. He began researching treatment facilities. (GX 1-5; Tr. 98-102, 125-130)

By the end of July 2019, Applicant voluntarily enrolled in an intensive outpatient program. Upon enrollment, he told counselors about his alcohol and marijuana use. He tested positive for marijuana during his initial intake drug screen. He was diagnosed with alcohol dependence, uncomplicated. He was not diagnosed with any conditions relating to drug use. He and his second wife also reconciled. (GX 1-5, 7; Tr. 100-102, 128-132)

Applicant completed the intensive outpatient program in September 2019 and records reflect that no further services were necessary. Nonetheless, he continued alcohol counseling and regularly attended Alcoholics Anonymous (AA) meetings into 2020. In February 2020, he stopped alcohol counseling and explained that the counseling had become increasingly expensive as his insurance was not providing coverage and he lost rapport with his counselor. At the time, his condition was noted as guarded. Shortly afterwards, with the onset of the COVID pandemic, he stopped attending AA meetings. Still, he has not consumed alcohol or used marijuana since July 2019. (GX 1-5; Tr. 142-144)

In June 2022, Applicant submitted an SCA and disclosed a 1997 arrest for driving under the influence of alcohol (DUI) that was resolved through a diversion program. He further disclosed the inpatient treatment he received in 2008 for his opioid addiction and that he also received counseling from July 2019 through September 2019 for his use of alcohol. He did not disclose that he used marijuana in 2019 and that his marijuana use occurred while he was in possession of a security clearance. (GX 3)

In July 2022, Applicant participated in a background interview with a DOD investigator. In that interview, he discussed his 1997 DUI arrest and detailed his

struggle with narcotics from 2005 through 2009. He also provided a detailed history of his alcohol use including the events leading up to his decision to seek counseling in 2019. He also signed a release so the that the investigator could obtain his treatment records. He did not disclose any marijuana use. (GX 4)

Also in July 2022, Applicant's father passed away. Although he was close to his father and experienced significant grief over his loss, Applicant did not return to drinking alcohol or using drugs. (Tr. 82-84)

In October 2022, Applicant was again interviewed by a DOD investigator. This time, he was confronted with information about a failed drug test. He then recalled that, when he first started alcohol treatment in 2019, he had a drug test and tested positive for marijuana. He detailed his marijuana use through July 2019 and admitted that he held a security clearance at the time of his use. He stated that he did not list this marijuana use in his June 2022 SCA because he had forgotten about it and had been focused on detailing his alcohol treatment. (GX 4)

In March 2023, based on difficulties relating to his security clearance and the fact that he was still a probationary employee, Applicant was terminated from his employment with the federal agency. The stress led Applicant to "reestablish" his "mental health recovery" by returning to alcohol counseling. Records reflect that he was candid about his past alcohol and drug use as well as stressors relating to his unemployment and family health. While the counselor consistently reminded Applicant of available resources to maintain his abstinence from alcohol, including attending AA meetings, records further reflect that Applicant appeared able to maintain his sobriety with little threat of relapse. Since then, he has continued counseling at about a monthly frequency. (GX 1-2, 6; AX F-G; Tr. 143-147)

In his August 2023 SCA, Applicant again disclosed his 1997 DUI, his 2008-2009 treatment for narcotics addiction, and his 2019 treatment for alcohol. He further disclosed that he had used marijuana on four to six occasions in 2019 and that this use occurred while he held a security clearance. He detailed that he had been denied a clearance in February 2023 because he had "forgotten" about his marijuana use in 2019 when submitting his previous SCA and that he was terminated from a federal agency for a "mistake" regarding his disclosures in a previous application. (GX 2)

In an October 2023 SCA, Applicant again disclosed that he had been terminated from a federal agency because he "inadvertently failed to disclose" information in a previous SCA. He then disclosed the same information contained in his August 2023 SCA. (GX 1)

In his February 2024 response to interrogatories, Applicant stated that he used marijuana from May 2019 through July 2019, during a period that his wife left him. He described this time as his "rock bottom." (GX 4)

Applicant testified that he has not consumed alcohol or marijuana since July 2019 and does not associate with anyone who uses marijuana. He submitted a statement of intent to abstain from all marijuana and alcohol use with the understanding that any future use was not compatible with his holding of a security clearance. (AX A; Tr. 125-128)

Mr. V, a certified addiction counselor, testified on Applicant's behalf. He stated that he began working with Applicant in March 2023 and continues to consistently see him once or twice per month. Mr. V noted that, at the start of their sessions, Applicant was nervous about family stressors, work issues, and the security clearance process. However, he believed that Applicant had "internalized" his recovery and exhibited high awareness of his addiction. He opined that, while Applicant's diagnosis of alcohol use disorder was always present, he had been in a stable condition for several years and was committed to abstaining from any alcohol or marijuana use. He believed Applicant had the judgement, reliability, and trustworthiness necessary to hold a security clearance. (Tr. 35-61)

Two former work colleagues testified on Applicant's behalf. Both have known Applicant for over ten years and were aware of his past struggles with alcohol. One was additionally aware of his past marijuana use. Both spoke highly of Applicant's technical expertise and believed he had taken significant steps to address his addiction. They further believed he possessed the judgment, reliability and trustworthiness necessary to hold a security clearance. (Tr. 21-34, 64-78)

Applicant's second wife submitted a declaration describing her awareness of Applicant's history of alcohol and marijuana use. She admitted to having her own history of alcohol abuse and that Applicant was supportive when she decided to quit drinking in 2011. She further detailed that Applicant had maintained alcohol and drug sobriety since completing the intensive outpatient program in 2019. She expressed that Applicant was committed to remaining sober and to his family. Applicant's oldest son also submitted a letter stating that Applicant assisted him in resolving his own struggles with substance abuse and was a supportive father. (AX B, D)

Applicant also provided character-reference letters from nine additional individuals who further highlighted his technical proficiency and leadership on the job. Several directly addressed Applicant's history of alcohol use and stated their belief that he was committed to maintaining his sobriety. They all noted that he exhibited the reliability, trustworthiness and exercise of good judgment necessary to maintain a security clearance. (AX E)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard

indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 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 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.” 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 not drawn 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 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.

Analysis

Guideline G, Alcohol Consumption

The security concern relating to 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 adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable:

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

Beginning in 2009, Applicant's alcohol use increased over time. His consumption continued to the point where he was unable to stop using and would hide his alcohol use from his wife. In 2019, he was diagnosed with alcohol dependence, uncomplicated. In February 2020, he was discharged from counseling with a guarded prognosis. The above disqualifying conditions are applicable.

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

Applicant has an extended history with alcohol misuse and substance abuse. His 1997 DUI arrest and period of illegal narcotics use from 2005 through 2009 were not alleged within the SOR, but may be considered in evaluating his evidence of extenuation, mitigation, or changed circumstances; to consider whether he has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; and as part of a whole person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Applicant credibly testified to an acute awareness of his past struggles with alcohol and detailed his efforts in recovery. He acknowledged that he struggled with addiction in his past and realized the extent of his alcohol problem in July 2019. Shortly afterwards, he voluntarily enrolled in an intensive outpatient program, which he completed in September 2019. His counselors at the time determined that no further services were necessary, but he continued to participate in AA meetings and regular counseling.

Concerns over the cost of treatment and a deterioration in the relationship with his counselor led Applicant to terminate counseling services in February 2020. Later that year, with the onset of the COVID pandemic, he stopped attending AA meetings. Notably, he did not return to consuming alcohol, including after his father passed away in 2022.

After experiencing increased stress in March 2023, Applicant reinitiated counseling to sustain his recovery. Since then, he has continued to participate in counseling and is credited with taking ownership of his circumstances. He credibly testified to understanding that he has a disorder relating to alcohol use and has maintained complete sobriety for nearly six years. He has the emotional tools and support in place to maintain that sobriety going forward. All the above mitigating conditions are applicable.

Guideline H, Drug Involvement and Substance Misuse

The security concern relating to drug involvement and substance misuse is set out in 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 adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (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.

At the height of his alcohol abuse, Applicant began using marijuana from about May 2019 through July 4, 2019. He tested positive for marijuana when he began the intensive outpatient program shortly afterwards. His marijuana use occurred while he was in a position that required him to maintain access to sensitive and classified information. All the above disqualifying conditions are applicable.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided 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 or misuse is grounds for revocation of national security eligibility.

Applicant used marijuana over an approximate six-week period in 2019 during the height of his alcohol use and at a time that he described as his “rock bottom.” The fact that this use occurred while he was in a position requiring access to sensitive and classified information is particularly troubling. Nonetheless, he completed the intensive outpatient program in September 2019 and has since abstained from any illegal drug use.

In the nearly six years that have passed, Applicant established changed circumstances, making any future use of marijuana or any illegal substance unlikely to recur. He continues to regularly see his counselor, who is fully aware of his past drug use. His wife is also aware of his past drug use and supportive of his efforts to maintain his alcohol sobriety and abstain from any drug use. He does not associate with anyone who uses marijuana and submitted a statement expressing his understanding that any use of marijuana is incompatible with holding a security clearance. Additionally, he had the knowledge and capacity to assist his son during his own struggles with substance abuse. Applicant has repeatedly acknowledged his drug involvement, evidenced actions taken to overcome this problem, and established a pattern of abstinence. All the above mitigating conditions are applicable.

Guideline E, Personal Conduct

The security concern relating to personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified 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 adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant omitted his 2019 marijuana use in his June 2022 SCA and during his July 2022 interview with a DOD investigator. He only disclosed his marijuana use in October 2022 after being asked about a positive drug test that occurred when he entered the intensive outpatient program in 2019. Applicant consistently stated that his focus had always been on his alcohol abuse and that his failure to not disclose his marijuana use was inadvertent.

In review of the record as a whole, Applicant repeatedly disclosed his 1997 DUI, his narcotics addiction from 2005 through 2009, including his participation in an inpatient program in 2008, as well as details of his alcohol abuse and his participation in the intensive outpatient program in 2019. In his August 2023 and October 2023 SCAs, he additionally disclosed his marijuana use, as well as his March 2023 termination from the federal agency. He provided further details of his drug use in his February 2024 response to interrogatories and again at hearing.

Given the extent of his disclosures and his candor at hearing, I find that Applicant was credible in his testimony that he did not intentionally omit his 2019 marijuana use. He credibly testified that his focus was on disclosing his alcohol problem and treatment and that he initially forgot to disclose his brief period of marijuana use. As such, neither AG ¶¶ 16(a) or 16(b) has been established for SOR ¶¶ 2.a or 2.b.

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 have incorporated my comments under Guideline G, Guideline H, and Guideline E in my whole-person analysis.

At hearing, Applicant provided a detailed and introspective analysis of his past difficulties with alcohol and his prior history of substance abuse. He recognized that he hit “rock bottom” in 2019 and committed to treatment. Since then, he has made substantive changes to his circumstances and abstained from any alcohol or drug use. I found his testimony and assertions of reform and rehabilitation credible and supported by objective evidence as well as the testimony of those who interact with him on a near-daily basis. Overall, the record evidence leaves me without questions or doubts about his eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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 H:	FOR APPLICANT
Subparagraphs 1.a – 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant
Paragraph 3, Guideline G:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Bryan J. Olmos
Administrative Judge