



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



Appearances

For Government: Alison P. O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/24/2025

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant mitigated security concerns under Guideline H (drug involvement and substance misuse) but failed to provide sufficient evidence to mitigate security concerns raised under Guideline G (alcohol consumption). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 30, 2023. On November 13, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines G and H. The DOD acted 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 26, 2023, and requested a hearing before an administrative judge. The case, originally assigned on June 7, 2024, was reassigned to me on October 3, 2024, after Applicant lost and then regained sponsorship for a clearance by a defense contractor.

On October 21, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant her hearing was scheduled to be conducted by video teleconference on November 14, 2024. The hearing was convened as scheduled. Government Exhibits (GE) 1 through GE 5 were admitted in evidence without objection. Applicant and two witnesses testified, and she submitted Applicant Exhibit (AE) A, which was admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on November 25, 2024.

Findings of Fact

In Applicant's answer to the SOR, she admitted all allegations in the SOR, ¶¶ 1.a through 1.e, and 2.a. Applicant's admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 42 years old. She graduated from high school in 2000, attended community college from 2021 to 2022, and earned a bachelor's degree from a public university in December 2022. She married in 2012, divorced in 2015, and does not have children. Applicant is applying for a training specialist position with a defense contractor. This is her first security clearance application. (GE 1, GE 2; Tr. 23-25, 96)

Applicant completed her first SCA in March 2023. She disclosed she illegally used marijuana from about June 1999 through about February 2023. Specifically, she responded "yes" to the question in Section 23, Illegal Use of Drugs or Drug Activity, asking whether, in the last seven years, she had illegally used any drugs or controlled substances, commenting that she "Used [marijuana] for back and neck pain as well as anxiety. Daily in the evening." (GE 1 at 40) She denied having an intent to use marijuana in the future, stating:

I had a medical cannabis card. I do not feel I require cannabis, it is legal in [home state (S1)], and I do not like prescription drugs. However, I recognize it is not federally legal and I have chosen to have my license revoked. (*Id.*)

Applicant's marijuana use from 1999 to February 2023 ranged from periods of no use at all, to occasional use, and then daily use. She admitted to using marijuana daily, from 2020 until she stopped in February 2023. (GE 2 at 14) She said she used marijuana as an alternative to prescription medication for her back and neck pain, and anxiety. She injured her back and neck at 15 years old. In March 2022, she obtained a medical marijuana card issued by S1, and she purchased marijuana at state dispensaries. She previously had purchased marijuana from various unknown individuals. Applicant voluntarily relinquished her marijuana card in about February 2023, after she decided to stop using marijuana as she pursued work in the defense industry. (GE 1, GE 2, GE 5; Tr. 66-68; AE A)

In her March 2023 SCA, Applicant also disclosed being arrested, charged, and convicted of driving under the influence (DUI), third in August 2018, a felony offense. She was sentenced to three years' incarceration (of which two years and eight months were

suspended); fined \$1,000 and assessed court costs of \$633; supervised probation for an indefinite time and had her driver's license revoked indefinitely. (GE 1-4; Tr. 49-58; AE A)

Under Guideline G, the SOR alleges Applicant had four DUI incidents between 2010 and 2018. SOR ¶ 1.a, alleges Applicant was charged and convicted of DUI in August 2010. SOR ¶¶ 1.b and 1.c allege Applicant was charged and convicted of DUI in June and July 2013, respectively, and in both instances, she was sentenced to six-months' incarceration, each with five months suspended. SOR ¶ 1.d, discussed above, alleges Applicant was charged and convicted of felony DUI (third offense) and sentenced to three years' incarceration, with two-years, eight months, 20 days suspended. SOR ¶ 1.e alleges Applicant continued to consume alcohol to intoxication until about February 2023. (SOR Answer; GE 1-5; AE A)

Under Guideline H, the SOR alleges in ¶ 2.a that Applicant used marijuana from about June 1999 to about February 2023. Applicant admitted all DUI incidents and discussed each in detail during her background interviews and the hearing. She also admitted using marijuana during the period alleged. (SOR Answer; GE 1-5; AE A)

Applicant's first DUI happened in 2010 while she was driving in a neighboring state (S2). She parked on the shoulder of the road after having a flat tire, and a police officer (police) stopped to assist her. Upon engagement, the police suspected she was intoxicated, and took her to the station where she was administered a breathalyzer. Her blood alcohol concentration (BAC) measured .24, and she was charged with DUI. She was later convicted and sentenced to community service, mandatory participation in an alcohol abuse training program, and unsupervised probation in her home state. Applicant completed all requirements. (GE 2; Tr. 25-30) (SOR ¶ 1.a)

In 2013, Applicant experienced two DUI incidents within a five-week period. Applicant and her ex-husband (EH) were having marital problems. They resided in separate households; EH lived across the street from a bar they frequented, and she lived about a mile away. Before midnight on May 31, 2013, police stopped Applicant when she drove her car across the median. She said she turned her head briefly to look towards EH's home. They had been out together at the bar celebrating their first anniversary. She was unaware of the amount of alcohol she consumed, and admitted making a poor decision to drive after drinking. She refused the breathalyzer and was charged with DUI and refusal. At court, she admitted her guilt, the refusal charge was dropped, and she was sentenced to 10 days confinement, which she satisfied by serving two weekends in jail. (GE 2, GE 3; Tr. 30-35) (SOR ¶ 1.b)

In early July 2013, Applicant was arrested for DUI again. She said that, as she drove by EH's home, she noticed a police officer speaking with him. She was then unaware EH had filed a complaint against her for trespassing/annoying phone calls. Police saw her drive by, followed and stopped her to execute the warrant, and suspected she was intoxicated. Applicant said it was about 2:00 PM, she had been drinking wine at the bar, but said she felt fine to drive. Her BAC level measured .08, and police arrested her for misdemeanor trespassing and DUI, second. She pled guilty to DUI in court. She

said she was physically incarcerated between 27 to 30 days for both DUIs. Applicant did not experience another DUI event until August 2018. (GE 2, GE 3; Tr. 35-40) (SOR ¶ 1.c)

Applicant has a long history of alcohol consumption, which she discussed in detail during her background interviews. From 1999 to about 2012, she drank three to five glasses of whisky or wine three to four times per week, and she drank to intoxication once or twice a week. From 2012 to about 2014, she drank a bottle of wine daily, drinking to intoxication daily. She said she decreased her alcohol consumption after her two DUI convictions in 2013. From 2014 to 2017, she drank one to three glasses of whisky or wine once a week, and she drank to intoxication once or twice a month. In 2017, she said she increased her alcohol use due to family issues. From 2017 to August 2018, she drank one to three glasses of whisky or wine, two or three times a week on weekdays, and drank five to seven glasses of whisky or wine on the weekends. She drank to intoxication one to three times a week. (GE 2, GE 3; Tr. 25-64) (SOR ¶ 1.e)

In August 2018, Applicant was arrested and charged with felony DUI for receiving three DUIs within a five-to-10 year period. She explained that her ex-boyfriend got into an argument with his friend, and she left the residence in her car to remove herself from the situation. After driving a short distance, she said she realized this was a bad idea because she had been consuming alcohol. She did an illegal "U-turn," and police saw her. She was stopped, administered a breathalyzer, and her BAC level measured .17. She was arrested, charged with felony DUI, and incarcerated from August 2018 to January 2019. She left jail to participate in treatment at a two-month inpatient alcohol abuse rehabilitation center prior to her trial. After trial, she returned to jail, completed her sentence, and was discharged on January 28, 2019. (GE 1-4; Tr. 49-64; AE A) (SOR ¶ 1.d)

Applicant did not consume alcohol during her incarceration and in-patient alcohol abuse treatment. However, she disclosed drinking one to three glasses of whisky or wine two to three times a week and to drinking intoxication monthly from 2019 until about February 2023. She claimed she stopped consuming alcohol from February 2023 to about February 2024 to improve her lifestyle and to pursue employment opportunities in the defense industry. She told the DOD investigator and her family that she would stop consuming alcohol altogether. She also stated, "I consider alcohol is not an option for me." (GE 2 at 17) She currently consumes alcohol but said she no longer drinks to intoxication. (GE 2, GE 3; Tr. 25-64)

Applicant was required to complete one year of supervised probation after her release in January 2019. During probation, she was required to abstain from alcohol consumption, but she did not. She met a licensed clinical substance abuse counselor (Ms. TA), who she hired as her personal counselor from July 2020 through about March 2023. She had discussions about alcohol consumption, and the appropriate amount of alcohol she could consume. Applicant decided to consume alcohol with awareness that she has an alcohol problem. In addition to participating in counseling with Ms. TA, she also attended Alcoholics Anonymous (AA) meetings. She said she stopped attending AA meetings after her counselor was diagnosed with cancer. She last attended an AA meeting in October 2024 but maintains contact with friends from AA that still support each

other. Applicant completed all required court-mandated alcohol abuse training and testing. (GE 2, 3; Tr. 25-64) She said she voluntarily kept, and still has the interlock device (breathalyzer) in her car, and she made the following comment regarding the device:

And, so, I left [the interlock device] in voluntarily. I was able to have it out in March. But, just to make sure that I don't put myself or anybody else in danger, I voluntarily left that in the car. (Tr. at 58-59)

Two witnesses testified in support of Applicant's eligibility for a security clearance. A prospective defense contractor, a project manager, attested to her superior communication skills, aptitude, pertinent qualifying education, and dedication to mission accomplishment regardless of the hour. A second witness, her close relative, a decorated Navy Sailor who served in the 1970s, described her as hardworking, bright, dedicated, and enthusiastic. He said employers appreciate that she is gifted, talented, and dependable. She gives "110%" to accomplish the mission. He favorably endorsed her application, stating that she has remained sober, and is committed to it. She occasionally consumes alcohol, but not to intoxication. She said she was going to remain 100% sober but she abstained from consuming alcohol for about a year. Though she no longer attends AA meetings, she still engages with her friends from AA. She does not drink to excess and he does not believe she will do this again. He supported her decision to keep the interlock device on her car. (Tr. 78-93)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is described t 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 are potentially applicable in this case:

AG ¶ 22(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;

AG ¶ 22(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

AG ¶ 22(g): failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant's long history of alcohol use, her habitual consumption to the point of intoxication, four DUI incidents, and her failure to abstain from alcohol consumption during supervised probation establish AG ¶¶ 22(a), 22(c), and 22(g).

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

AG ¶ 23(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;

AG ¶ 23(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

AG ¶ 23(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 had four DUI incidents over an eight-year period. She served jail time in three of her four DUIs. She served 100 days' confinement after being convicted of felony DUI in 2018. Upon her release, she did not abstain from alcohol consumption as required by the terms of her supervised probation. She consumed alcohol to intoxication from about 2019 until early 2023. She abstained from consuming alcohol for about a year but resumed consumption despite her stated commitment to 100% abstain from consuming alcohol again. She has not been under the care of a counselor since February 2023, and

last attended her AA meetings in October 2024, though she is credited with participating in informal AA discussions with supportive friends from the group.

Overall Applicant is commended for her effort to remain sober and her decision to keep the interlock device in her car as an extra safeguard to ensure personal and public safety. However, she has a long history of alcohol-related incidents, including consistently drinking to intoxication on a daily basis. Despite numerous problems caused by her excessive alcohol consumption, four DUIs, serving significant jail time, in-patient alcohol rehabilitation treatment, and her stated commitment to 100% abstain from alcohol consumption, she has been unable to do so for more than a year. Though she received personal alcohol abuse counseling for almost three years and participated in countless alcohol abuse treatment programs, she still consumed alcohol to intoxication after she was released from jail until she stopped drinking in February 2023. She was also unable to abstain from consuming alcohol as required during her supervised probation. 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.”

None of the mitigating conditions are sufficiently applicable to overcome concerns and doubts about Appellant’s alcohol consumption, which continues to cast doubt on her current reliability, trustworthiness, and judgment. Her actions and conduct with respect to alcohol consumption reflect poor judgment and raise questions about her overall suitability for a security clearance.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is described 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.

Applicant's admissions and the evidence in this case establish the following disqualifying condition under AG ¶ 25.

AG ¶ 25(a): any substance misuse (see above definition).

Though Applicant admitted to purchasing and using marijuana throughout this period, before and after receiving a state-issued medical marijuana card, marijuana possession was not alleged, and therefore is not applicable here.

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

AG ¶ 26(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

AG ¶ 26(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.

AG ¶ 26(a) is applicable. This is Applicant's first time going through the security clearance process. She admitted and testified credibly concerning her history of marijuana use starting in 1999. She injured her back and neck when she was 15 years old, and used marijuana to alleviate her pain. She received a medical marijuana card issued by her state. She voluntarily relinquished her card as she stopped using marijuana altogether in February 2023, over two years ago. She is committed to being drug free, as she pursues a career in the defense industry. Applicant's marijuana use happened under circumstances unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or judgment. She mitigated drug involvement and substance misuse security concerns.

AG ¶ 26(b) is not fully applicable. Applicant acknowledged her drug use, successfully refrained from using marijuana for over two years, and established a pattern of abstinence. She most recently used marijuana she purchased from a state dispensary at home, and she stated her intent to abstain from future drug involvement or misuse. She did not officially sign a statement of acknowledgment that any future involvement or misuse would be grounds for revocation of national security eligibility.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines G and H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines G and H, and evaluating all evidence in the whole-person context, I conclude Applicant mitigated security concerns under Guideline H, but she did not mitigate security concerns under Guideline G.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under her current circumstances, a clearance is not warranted. In the future, she may well demonstrate persuasive evidence of her security worthiness.

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 - 1.e: Against Applicant

Paragraph 2, Guideline H: **FOR APPLICANT**

Subparagraph 2.a: For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge