



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 15-04269
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Richard L. Morris, Esq.

09/18/2019

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines I (Psychological Conditions), G (Alcohol Consumption) and E (Personal Conduct). Applicant mitigated the Guideline G and E security concerns, but he has not mitigated the Guideline I security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 1, 2014. After an extensive background investigation, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) on February 20, 2019, alleging security concerns under Guidelines I, G, and E. The DOD CAF acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on March 22, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 19, 2019, and the case was assigned to me on April 23, 2019. On May 8, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 12, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 9 were admitted in evidence without objection. Applicant testified, presented the testimony of five witnesses, and submitted Applicant's Exhibits (AX) A through R, which were admitted without objection. DOHA received the transcript (Tr.) on June 20, 2019.

Findings of Fact

In Applicant's answer to the SOR, he stated that he could not admit or deny the allegations in SOR ¶¶ 1.a, 1.b, 2.a, and 3.a, because he had not seen the medical reports on which the allegations were based. I have treated his answer to these allegations as denials. He admitted the allegations in SOR ¶ 2.b, 3.b, and 3.d. He denied the allegation in SOR ¶ 3.c. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old logistics management specialist employed by a defense contractor since March 2006. He married in 2015, after cohabitating since 2012. He divorced in 2016. He has a six-year-old child, and he shares custody of the child with his ex-wife. He currently lives with his fiancée, who has two children, ages 8 and 10. He received a security clearance in August 2009.

In 1997, while Applicant was in high school, he and some friends were at a party, and they were mixing liquid drain cleaner with aluminum foil in two-liter plastic bottles. The chemical reaction made the bottles explode. Someone was alarmed by the loud noise and called the police, and Applicant and five others were taken into custody. Applicant's five companions were released to their parents. Because his father was traveling and his mother did not want to drive at night on the highway, Applicant spent the night in juvenile detention. (Tr. 83-84.)

Applicant attended college from 1997 to 2001 but did not graduate. He testified that he was very sheltered at home, to the extent that he did not know how to do laundry or balance a checkbook. (Tr. 129.) Around 2000, he began consuming alcohol infrequently, but he quickly increased his consumption to the point of frequent intoxication, regularly consuming 7-9 beers at a sitting. (Tr. 84.)

On September 22, 2001, Applicant had been drinking with friends, and he was heavily intoxicated. A friend dropped Applicant off at his apartment. While walking to the apartment, Applicant flicked a lighted cigarette into the bed of a pickup truck parked in a carport and started a fire. The fire spread to the carport and four adjoining residences. The truck and all four residences were destroyed. (GX 9 at 1-2; Tr. 85.)

On October 10, 2001, after another night of heavy drinking with friends, Applicant flicked a cigarette onto the carpet in a hallway of his apartment building and ignited a small fire that he quickly extinguished. About a week later, he poured hair spray from a pump bottle into a beer can and ignited it. He stumbled and ignited a fire in the hallway. He was unable to extinguish the fire, and the fire department was summoned. A day later, he dropped a lighted match onto a bed comforter and ignited it. (GX 9 at 2; tr. 85-86.)

In November 2001, Applicant's father, who was on active duty at the time, arranged to have him evaluated by a psychologist in the Navy Addictions Rehabilitation Department. Applicant told the psychologist that he had been diagnosed with attention deficient hyperactivity disorder (ADHD) as a child and treated with medication. He also told the psychologist that he had been diagnosed with bipolar disorder in 2000 and was prescribed medication, but that he stopped taking the medication because he could not drink alcohol while on the medication. He told the psychologist that he had difficulty controlling anger because of his bipolar disorder. The psychologist did not believe that Applicant was open and forthcoming during their interview. He commented that Applicant appeared to be seeking help in order to present himself in a positive light in court. The Navy psychologist diagnosed him with alcohol abuse but did not diagnose him with bipolar disorder. (GX 6.) At the hearing, Applicant testified that he was never diagnosed as bipolar, but he assumed that he was bipolar, because he was given a prescription for a drug used to treat bipolar disorder while he was in college. (Tr. 104-05, 110.)

After the November 2001 evaluation, Applicant completed a two-week alcohol-awareness program, followed by a third week of intensive treatment. (Tr. 89-90.) The Navy psychologist recommended that he abstain from alcohol. Applicant testified that he complied with the recommendation. (Tr. 111.) The record does not reflect when he resumed drinking or his level of consumption. He now limits his consumption to one or two drinks when he and his fiancée have a dinner "date" twice a month. (Tr. 123.) In his 2014 SCA, he was asked, "Have you EVER received counseling or treatment as a result of your use of alcohol in addition to what you have already listed on this form?" He answered "No" and did not disclose his treatment in the Navy program. (GX 1 at 35.)

In September 2002, Applicant was tried for the four fire-related events. He pleaded guilty to two felony counts of risking a catastrophe, two misdemeanor counts of reckless endangerment, and two misdemeanor counts of criminal mischief. Two felony counts of arson were *nolle prosequi* in accordance with a plea agreement. In October 2002, he was sentenced to jail for four consecutive sentences of 3-6 months (totaling 12 to 24 months) for the two counts of risking a catastrophe and two counts of reckless endangerment, and he was sentenced to probation for the two counts of criminal mischief. He was in jail until October 2003. (GX 1 at 32-33; GX 7.)

While Applicant was awaiting trial, he was employed as a cook in a local tavern. The tavern owner's son accused Applicant of damaging a restroom. When the owner's son kept questioning Applicant and "got in his face," Applicant pushed him away, and an

altercation ensued. Applicant had not been drinking because he was at work. Applicant was “asked to leave,” but two days later he was rehired. (Tr. 87-88.) No criminal charges were filed.

In June 2003, while in jail, Applicant completed an alcohol and drug educational seminar and a 30-hour wellness-education program presented by the state department of corrections. (AX B; AX C.) In May 2011, he received an associate’s degree in business management. In November 2012, he was on the dean’s list for the winter term, and he was inducted into a national technical honor society. In December 2013, he received an associate’s degree in information security technology. (AX D-H.)

Applicant started seeking psychotherapy around 2011-2012, after he learned that his ex-wife was pregnant by her ex-husband. (Tr. 97.) He started having panic attacks, and his psychotherapist prescribed an anti-anxiety medication. (Tr. 93.) He did not disclose his treatment for anxiety in his 2014 SCA, apparently because it was related to his marital problems. (GX 1 at 29.)

In May 2014, Applicant was involved in an altercation with a fellow worker that was triggered when his fellow worker played a practical joke by disconnecting all the cables from Applicant’s computer. Applicant was convicted of assault and battery. He was fined, placed on administrative leave, and was permanently barred from entering the military installation where he had been working. The permanent bar was later reduced to six months. (Tr. 108-09; GX 2; GX 3 at 20. In August 2014, he completed a 12-week psycho-educational program in anger management. (AX A.)

In February 2018, Applicant was evaluated by a licensed clinical psychologist at the request of the DOD CAF. The psychologist commented that Applicant was not truthful and forthcoming during the evaluation. She noted that he denied ever having symptoms of ADHD, and that he did not disclose his treatment for anxiety in his SCA. She administered a personality assessment inventory but found that the results were not interpretable because the validity scales indicated that he was presenting himself in an unrealistically favorable light. She reported that Applicant admitted starting only one fire and claimed that he was present at the other fires but did not start them. She reviewed his medical records, which reflected that a psychiatrist diagnosed Applicant with bipolar disorder in 2000. She also commented that Applicant’s medical records reflect that he frequently admitted that he was diagnosed as bipolar. She stated her ability to make a definitive diagnosis was limited, because Applicant appeared to have withheld information about his mental health history. She concluded that Applicant “has mental, emotional, or personality conditions that could impair judgment, reliability, or trustworthiness.” Her diagnosis was (1) alcohol use disorder, remission status unknown; (2) bipolar disorder, most recent episode depressed; and (3) anxiety disorder, unspecified. (GX 4.)

A long-time friend and former co-worker describes Applicant as sincere, kind-hearted, trustworthy, and hardworking. She describes him as a “doting father and caring friend.” (AX J.) A deputy sheriff and former classmate considers Applicant trustworthy,

committed, and hardworking. (AX K.) A friend who has known him for more than 25 years considers him trustworthy, dedicated, hardworking, compassionate, and a wonderful father. (AX L.) A friend who has known him for more than 30 years considers him caring, determined, and hardworking. (AX M.) Applicant's fiancée knows him as an honest and hardworking person and a loving father for his daughter as well as her two children. (AX N.)

A psychologist, who has known Applicant for about nine years, submitted a letter attesting to his positive attitude and integrity through difficult times and his honesty and loyalty to family and country. The psychologist's relationship with Applicant has been one of friendship rather than professional. (AX O.)

Applicant's father, a retired U.S. Navy officer, is a co-owner and vice-president of the company for whom Applicant works. He submitted a statement describing Applicant's discovery that his daughter was molested by her half-brother, his subsequent divorce, and the contentious custody battle that followed the divorce. He states that Applicant was diagnosed as a child with ADHD without hyperactivity. He states that Applicant has never been diagnosed with bi-polar disorder or alcohol dependence. He describes Applicant as a loving father, and he describes Applicant's fiancée as a "wonderful woman." (AX P.)

In November 2018, Applicant was evaluated by a qualified medical health professional and was administered a substance-abuse subtle-screening inventory (SASSI-4) and determined to have a low probability of a substance-abuse disorder. The SASSI reflected a "moderate clinical issue with defensiveness," but the clinician who administered the SASSI did not observe any remarkable defensiveness during the administration of the SASSI or the biopsychosocial assessment. The evaluator did not recommend substance-abuse treatment. (AX Q.)

Applicant received psychotherapy from three medical professionals between November 2017 and March 2019. He saw the first therapist 15 times and was diagnosed with generalized anxiety disorder, post-traumatic stress disorder (PTSD), and adjustment disorder with anxiety. He was transferred to another therapist after the first therapist starting seeing his daughter, who had accused her half-brother of sexually molesting her.

Starting in August 2018, the second therapist saw him six times and diagnosed him with generalized anxiety disorder, PTSD, and major depressive disorder, recurrent and moderate. This therapist attributed his PTSD in large part to trauma during his previous marriage and the contentious divorce that followed. He is now considered emotionally stable, but occasionally is affected by stress and depression, mostly when he and his ex-wife have conflicts in their co-parenting. He continues to receive psychotherapy for anger management. He is in the clinical range for anxiety and PTSD, but his aggressive tendencies and anger are in the non-clinical range. He has no indication of an alcohol-abuse disorder and is not bipolar. This therapist concludes by stating that Applicant's "current mental health assessments, observations, mental health

treatment, and his personal commitment to change via training place [him] in a favorable light.” She continues to treat Applicant and sees him every two or three weeks for about an hour. (Tr. 19-20.) She has never seen symptoms of a bipolar disorder. She gives him a “good” prognosis. (Tr. 20-23.)

A third therapist evaluated Applicant in December 2018. He diagnosed Applicant with adjustment disorder with mixed disturbance of emotions and conduct, which was considered an improvement from the two previous evaluations. (AX R.)

Applicant testified that he takes an anti-anxiety medication every morning. Although his prescription allows him to take the medication “as needed,” he has not needed to take a second dose during the day. If he feels a sense of conflict, he has learned to walk away, talk to himself, and ask himself how he should handle it. He no longer needs to “harbor everything inside anymore.” Instead, he talks to one of his close friends. (Tr. 93-94.)

The co-owner of the company by whom Applicant is employed has known him since he was first employed in 2006. She owns 51% of the company and Applicant’s father owns 49%. She is aware of the Applicant’s incarceration in 2002 and his altercation with a fellow employee in 2014. She believes that the co-worker, a known trouble-maker who is no longer employed by the company, was partly to blame for the 2014 incident. She believes that Applicant has matured since he was first hired. She considers him emotionally stable, honest, reliable, and trustworthy. She has seen no signs of alcohol abuse. (Tr. 39-45.)

A close friend of Applicant, who served on active duty in the Navy with Applicant’s father, has known Applicant since 2000. She visited Applicant when he was incarcerated. For the past three years, they have had monthly job-related contact and personal contact about every other month. She considers Applicant honest, reliable, and hardworking. She believes he has good judgment. She has never observed any emotional instability or excessive alcohol consumption. She believes Applicant was remorseful about his mistakes and has worked hard to turn his life around. She testified she would hire him “in a minute without hesitation. (Tr. 50-56,)

A co-worker, who is a retired master chief petty officer, has had daily personal and professional contact with Applicant since September 2018. They have become close friends. They have discussed Applicant’s past conduct, including the arson incidents in 2002, the altercation in 2014, and his current mental health treatment. The co-worker testified that he considers Applicant’s reliability “above reproach,” and he has complete trust in his judgment. He has no doubts about Applicant’s emotional stability. (Tr. 62-72.)

Applicant has held a second job as a contractor, on an “as needed” basis, for about four years for a company that owns four radio stations. His supervisor has professional contact with him “every month at least” and social contact every month or two. His supervisor browsed the SOR but did not read it carefully. He has never seen

Applicant intoxicated. He considers Applicant mature, trustworthy, reliable, “honest to a fault,” and a person with good judgment. He testified that Applicant had “some issues” during his divorce proceedings, but he is usually “very even-keeled.” (Tr. 73-81.)

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 I, Psychological Conditions

The SOR alleges that, in January 2018, Applicant was evaluated and diagnosed with alcohol use disorder, bipolar disorder, and anxiety disorder (SOR ¶ 1.a). It also alleges that, in around 2001, Applicant was diagnosed with alcohol abuse and bipolar disorder (SOR ¶ 1.b). Both allegations are established by the evidence submitted at the hearing.

The concern under this guideline is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. . . .

I have considered the following disqualifying conditions under this guideline:

AG ¶ 28(a): behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

AG ¶ 28(b): an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and

AG ¶ 28(d): failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

AG ¶ 28(a) is not applicable because it applies only to behavior “not covered under any other guideline.” Applicant’s criminal conduct was not alleged under Guideline J, but it was alleged under Guideline E and is addressed below under that guideline. AG ¶ 28(b) is established by the multiple mental-health evaluations reflected in the documentary evidence submitted at the hearing. AG ¶ 28(d) is established for Applicant’s discontinuance of his medication for bipolar disorder, and his decision to resume alcohol consumption after being advised in 2001 to abstain from alcohol. This disqualifying condition is not established for Applicant’s mental-health issues after they were identified in 2011 and thereafter, because the evidence indicates that Applicant complied with all treatment recommendations.

The following mitigating conditions are potentially applicable:

AG ¶ 29(a): the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

AG ¶ 29(b): the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

AG ¶ 29(c): recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

AG ¶ 29(d): the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

AG ¶ 29(e): there is no indication of a current problem.

AG ¶¶ 29(a) and 29(b) are established by the testimony and documentary evidence provided by Applicant’s current therapists. AG ¶ 29(c) is not established, because the health professional employed by the U.S. Government provided an unfavorable diagnosis. This unfavorable diagnosis is not overcome by the generally favorable testimony of Applicant’s therapists. His therapists attribute his ongoing PTSD and depression to emotional trauma during his

previous marriage and continuing conflicts with his ex-wife about co-parenting issues.

Applicant's lack of candor with the U.S. Government psychologist raises a question whether he has been candid with his own therapists. Furthermore, to the extent that there is doubt about the low probability of recurrence, the doubt must be resolved in favor of national security. *Egan*, 484 U.S. at 531. AG ¶¶ 29(d) and 29(e) are not established, because Applicant continues to deal with PTSD, anxiety, depression, and anger management.

Guideline G, Alcohol Consumption

The SOR cross-alleges the diagnoses alleged in SOR ¶¶ 1.a and 1.b (SOR ¶ 2.a). It also alleges that Applicant had been consuming alcohol at the time of the criminal incidents alleged in SOR ¶ 3.b (SOR ¶ 2.b). These allegations are supported by the evidence submitted at the hearing. He admitted SOR ¶ 2.b in his answer to the SOR.

The concern under this guideline 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 following disqualifying conditions are potentially applicable:

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(b): alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is 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;

AG ¶ 22(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;

AG ¶ 22(e): the failure to follow treatment advice once diagnosed; and

AG ¶ 22(f): alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

AG ¶¶ 22(a) and 22(c) are established. Applicant was heavily intoxicated when the various fire-related incidents occurred in September 2001.

AG ¶ 22(b) is not established. Applicant was at work but had not been drinking when the 2001 altercation in the tavern occurred.

AG ¶ 22(d) is established. Applicant was diagnosed with an alcohol use disorder by the Navy psychologist in 2001 and during the DOD CAF mental status evaluation in February 2018.

AG ¶¶ 22(e) and 22(f) are established by the Navy psychologist's recommendation in 2001 that Applicant abstain from consuming alcohol. The psychologist who conducted DOD CAF evaluation diagnosed Applicant with an "alcohol use disorder, remission status unknown," but she made no treatment recommendations.

The following mitigating conditions 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.

AG ¶ 23(a) is established. Applicant's last alcohol-related incident was in October 2001, and there is no evidence of recurrence.

AG ¶¶ 23(b) and 23(d) are established. Applicant acknowledged his excessive drinking in college and completed the Navy rehabilitation program. He followed the treatment recommendation for abstinence for a time. The record does not reflect when he resumed his consumption of alcohol, but it does reflect that he is now an occasional and moderate drinker. The DOD CAF evaluation includes a diagnosis of alcohol abuse, but the only evidence in the record suggesting that Applicant is alcohol dependent is the Navy psychologist's recommendation in November 2001 that he abstain from alcohol. His conduct since November 2001 does not reflect alcohol dependence.

Guideline E, Personal Conduct

The SOR cross-alleges SOR ¶¶ 1 and 2 under this guideline (SOR ¶¶ 3.a and 3.b). It SOR further alleges that Applicant was terminated from employment in 2002 for engaging in an altercation with another employee and for destruction of property (SOR ¶ 3.c). Finally, the SOR alleges that in May 2014, Applicant was charged with simple assault and battery following a physical altercation with a co-worker, that he pleaded guilty, that he was ordered to pay a fine, and that he was removed from working on a contract and barred from the military base on which he had been working (SOR ¶ 3.d).

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.

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 16(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;

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is 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;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . . (2) any disruptive, violent, or other inappropriate behavior; [and] (3) a pattern of dishonesty or rule violations . . . ; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing

The February 2018 evaluation by a duly qualified mental health professional employed the U.S. Government included a conclusion that Applicant withheld information, provided false information, and intentionally invalidated the personality assessment inventory. This evidence ordinarily would raise the concerns in AG ¶¶ 15(a), 15(b), and 16(a), but Applicant's lack of candor with the Government psychologist was not alleged in the SOR and may not be an independent basis for denying a clearance. However, conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's lack of candor with the Government psychologist for these limited purposes.

Applicant's criminal conduct in 2001 and 2014 raises the concerns in AG 16(c), 16(d), and 16(e). The following mitigating conditions are potentially applicable:

AG ¶ 17(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;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to

untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

AG ¶¶ 17(c) and 17(d) are established for the three fire-related incidents in September-October 2001. These incidents caused serious property damage and, endangered others. They resulted in felony convictions and a year in jail. However, they occurred 18 years ago. They were the product of Applicant's heavy alcoholic intoxication, and he has significantly modified his alcohol consumption since his release from jail.

AG ¶¶ 17(c) and 17(d) are established for Applicant's barroom affray in 2002, which was minor and mitigated by the passage of time without recurrence. They also are established for the altercation with a co-worker in 2014, which occurred more than five years ago, was instigated in large part by the coworker, and has not recurred. Applicant is now working in a supportive environment for a company co-owned by his father and a close friend, and he is surrounded by friendly and supportive co-workers, making further workplace violence unlikely. AG ¶ 17(e) is established by Applicant's full disclosure of his criminal conduct.

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 I, G, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines I, G, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the

security concerns raised by his alcohol consumption and personal conduct, but he has not mitigated the security concerns raised by his psychological conditions.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline I (Psychological Conditions): AGAINST APPLICANT

Subparagraphs 1.a and 1.b: Against Applicant

Paragraph 2, Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Paragraph 3, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 3.a-3.d: For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge