



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



In the matter of:)
)
 ---) ISCR Case No. 17-04304
)
 Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

03/18/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement and substance misuse, alcohol consumption, and personal conduct. Eligibility for a security clearance is denied.

Statement of the Case

On May 28, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a set of interrogatories. On March 5, 2018, Applicant responded to those interrogatories. On October 5, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all covered

individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on October 15, 2018. In a notarized statement, dated November 26, 2018, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on January 3, 2019, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on January 8, 2019. His response was due on February 7, 2019. Applicant apparently chose not to respond to the FORM, for as of March 8, 2019, he had not done so. The case was assigned to me on March 8, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted with limited comments all of the factual allegations pertaining to drug involvement and substance misuse of the SOR (SOR ¶¶ 1.a. through 1.i.); and alcohol consumption of the SOR (SOR ¶¶ 2.a. through 2.c.), but his comments related to the factual allegations pertaining to personal conduct (SOR ¶¶ 3.a. through 3.c.) were not responsive, for he failed to specifically "admit" or "deny" those allegations. Instead, he admitted the general conclusory introduction to those allegations. Accordingly, due to the uncertainty of Applicant's intentions with respect to the personal conduct allegations, and the Government's failure to follow up on them, I have registered a denial to the three factual allegations. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a defense contractor. He has been serving as a welder with his current employer since May 2015. A 2010 high school graduate, Applicant received college credits over a four-year period, but did not earn a degree. He has never served with the U.S. military. He was granted a security clearance in January 2016. Applicant has never been married, and he has no children.

Drug Involvement and Substance Misuse, Alcohol Consumption, and Personal Conduct

Applicant was a substance abuser whose substances of choice were marijuana, Adderall®,¹ Suboxone,² and alcohol. A prescription is required for both Adderall® and Suboxone.

Applicant started smoking marijuana (3-4 puffs of a marijuana joint) and drinking beer (6-8 Miller Light) on a daily basis after he broke his ankle while skateboarding when he was 14-years old, for they helped him with the pain. After his ankle healed, he continued his daily use of those two substances, essentially to relax. During an interview with an investigator from the U.S. Office of Personnel Management (OPM) in October 2017, Applicant denied that he had a problem with either substance. He said that he did not plan on stopping his usage as he had already scaled back his use of marijuana to 2-3 times per month (actually transitioning from using marijuana joints to vaping with marijuana oil in June 2017), and his beer consumption to one six-pack every 1-2 weeks, although he acknowledged that he consumes alcohol to the point of intoxication approximately three times per year at family and social gatherings. Furthermore, he claimed he shows up to work on time, and it does not affect his various family responsibilities.³

The marijuana leaf for the joints that Applicant initially obtained was purchased from someone who would meet him at Applicant's home. The cost was not revealed. The marijuana oil that Applicant now uses costs about \$40 per vial, and he purchases it at various outlets and through a cell phone app.⁴

Applicant denied that his use of marijuana or alcohol have contributed to any financial, criminal, employment, or security problems.⁵ Applicant's denial is inaccurate, and not based on fact.

Applicant was employed as a welder by one federal contractor from October 2010 until May 2015, during which time he was still using marijuana on a daily basis with work colleagues in the parking lot, and consuming beer before going to work on various occasions. On February 27, 2015, Applicant was administered a random urinalysis and breathalyzer test for alcohol and drugs. He tested positive for marijuana and failed the

¹ Adderall® is a prescription medication used to treat attention deficit hyperactivity disorder (ADHD) and narcolepsy. Adderall, a brand name, is a combination of amphetamine and dextroamphetamine, which are central nervous system stimulants, can be habit-forming. See <https://medicineplus.gov/druginfo/>

² Suboxone is a drug that contains buprenorphine, and it is used to reduce symptoms of opiate addiction and withdrawal. See <https://medicineplus.gov/druginfo/>

³ Item 4 (Enhanced Subject Interview, dated October 20, 2017), at 4-6.

⁴ Item 4, *supra* note 3, at 5.

⁵ Item 4, *supra* note 3, at 5.

breathalyzer test for alcohol.⁶ He was immediately suspended under the collective bargaining agreement, and referred to the company's Employee Assistance Program (EAP). While in the EAP, he again tested positive for marijuana and failed a breathalyzer test. As a direct result of his substance abuse under the collective bargaining agreement, on April 14, 2015, Applicant's employment was terminated.⁷ In his e-QIP, Applicant reported that he had left voluntarily by mutual agreement after failing his urinalysis and breathalyzer tests.⁸

On May 29, 2016, Applicant exited a parking lot without slowing down or stopping at the stop sign. A police traffic stop was made and the officer smelled alcohol coming from the vehicle. There was an open cold case of beer observed. After questioning Applicant and determining that he had consumed "a couple at lunch," and that there were illegal drugs in the vehicle, the officer conducted a search of the vehicle. The officer found an open cold can of beer, two glass marijuana smoking devices with marijuana residue, a plastic container with two grams of marijuana in it, and two prescription bottles without the proper markings containing Adderall® and Suboxone. Applicant falsely stated to the officer that he had prescriptions for both medications,⁹ and in his March 5, 2018 response to the interrogatories, he acknowledged that in the last three years before the interrogatories, he had never been prescribed any opioid or Adderall®.¹⁰ He was charged with possession of marijuana, 1st offense; possession of paraphenalia – not syringes; prescription violation; and open container.¹¹ On August 12, 2016, the prosecutor moved for "*nolle prosequi*" on the open container and marijuana charges.¹² The result of the remaining charges was not reported.

Although Applicant initially told the OPM investigator in October 2017 that he did not plan on stopping his usage of marijuana as he had already scaled back such use, in his November 2018 Answer to the SOR, he altered his response to say that he "will not use marijuana anymore."¹³ Applicant admitted that his most recent use of marijuana occurred during the first week of October 2017, when he used a marijuana vaping device

⁶ Item 6 (Warning Notice, dated February 27, 2015).

⁷ Item 6 (Notice of Discharge, dated April 14, 2015).

⁸ Item 3 (e-QIP, dated May 28, 2015), at 12-13.

⁹ Item 5 (Police Field Case Report, dated May 29, 2016).

¹⁰ Item 4 (Response to Interrogatories, dated March 5, 2018), at 2.

¹¹ Item 5 (Police Summary, dated June 1, 2016); Item 4 (Two Uniform Summonses, undated).

¹² Item 7 (Incident History, dated February 14, 2018); Item 4 (Two Uniform Summonses), *supra* note 10.

¹³ Item 2 (Answer to the SOR, dated November 26, 2018), at 1.

with marijuana oil.¹⁴ His claimed last use of alcohol occurred at dinner, the night before his October 2017 interview, when he consumed two beers.¹⁵

Although Applicant reported in his e-QIP that he had attended EAP-referred “treatment” with Alcoholics Anonymous (AA) for one month in 2015,¹⁶ Applicant told the OPM investigator that he has never sought counseling or treatment as a result of his use of alcohol or any other substance, and he has never been professionally diagnosed as abusing alcohol, being alcohol dependent, abusing drugs, or being drug dependent.¹⁷ His participation in the EAP program was a failure because of his positive urinalysis and his failed breathalyzer test.

Personal Conduct

On May 28, 2015, when Applicant completed his e-QIP, he responded to a question pertaining to the illegal use of drugs or drug activity found in Section 23: if, in the last seven years, he had illegally used any drugs or controlled substances by injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance? Applicant responded that he had tried marijuana in high school and then again one night in March 2015, while partying with friends. He added that he was now more responsible and needed to be gainfully employed. Applicant certified that his response was “true, complete, and correct” to the best of his knowledge and belief.¹⁸ In fact, his answer was deliberately false and incomplete, because he concealed both his true history of marijuana abuse and his declared future intentions, all as set forth above. Based on his response, a security clearance was given to him in January 2016.

When he was questioned by the OPM investigator in in October 2017, Applicant candidly admitted that he did not disclose his full history of marijuana use because he did not want to lose his job, and he also admitted that he was not candid during an earlier OPM interview – an unalleged act of conduct in the SOR – because he was scared and did not want to lose his security clearance because he would also lose his job.¹⁹

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing,

¹⁴ Item 4, *supra* note 3, at 4.

¹⁵ Item 4, *supra* note 3, at 5.

¹⁶ Item 3, *supra* note 8, at 27.

¹⁷ Item 4, *supra* note 3, at 5, 7.

¹⁸ Item 3, *supra* note 8, at 25-26.

¹⁹ Item 4, *supra* note 3, at 6.

“no one has a ‘right’ to a security clearance.”²⁰ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²¹

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”²² The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.²³

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified

²⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²² “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

²³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."²⁴

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."²⁵ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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 avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline H, Drug Involvement and Substance Abuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse 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.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always,

²⁴ *Egan*, 484 U.S. at 531.

²⁵ See Exec. Or. 10865 § 7.

adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

The guideline notes several conditions under AG ¶ 25 that could raise security concerns in this case:

- (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;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admittedly purchased,²⁶ possessed and used marijuana, both before and after he was granted a security clearance; he possessed Adderall®, and Suboxone without a prescription; on two separate occasions, he tested positive for marijuana during random urinalyses conducted by his employer; he was arrested and charged with possession of marijuana, 1st offense; possession of paraphernalia – not syringes; prescription violation; and open container. In October 2017, Applicant told an OPM investigator that he did not plan on stopping his usage of marijuana. AG ¶¶ 25(a), 25(b), 25(c), 25(f), and 25 (g) have been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

²⁶ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unalleged conduct, such as his purchase of marijuana, as well as his lack of candor, will be considered only for the five purposes listed above.

(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;

(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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

None of the mitigating conditions apply. Applicant has been using marijuana frequently over a lengthy period since he was 14-years old; he smoked marijuana at the workplace, with work colleagues; although he was on suspension from one employer for using marijuana, he ignored his responsibilities under the collective bargaining agreement and again tested positive during his EAP rehabilitation opportunity; and in October 2017, he stated that he did not plan on stopping his usage of marijuana. It was only after the SOR was issued in October 2018 that Applicant changed his stated intentions with respect to using marijuana in the future. While Applicant now claims to have no intention to use illegal substances in the future, it should be noted that he did not submit 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.

While Applicant's purported abstinence from illegal or unauthorized substances is to be encouraged, he admitted that his most recent use of marijuana occurred during the first week of October 2017, when he used a marijuana vaping device with marijuana oil. Considering the lengthy period and frequency of his marijuana use, commencing when he was 14-years old; his repeated opportunities to abstain from such use while employed with the employer who terminated him for violation of the drug use provisions under the collective bargaining agreement; and his evolving position regarding future intentions, Applicant's period of purported abstinence is simply too brief to establish a confidence that a relapse will not soon occur. In addition, there remains one lingering concern regarding Applicant's possession of Adderall® and Suboxone without a prescription. Further exploration into why he possessed those two medications was never made, leaving the issue unresolved. Under the circumstances, Applicant's actions continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set forth 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:

(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;

(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;

(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

(e) the failure to follow treatment advice once diagnosed.

Applicant started drinking 6-8 beers on a daily basis when he was 14-years old. In October 2017, he denied that he had a problem with alcohol, and indicated that his beer consumption had been reduced to one six-pack every 1-2 weeks. Nevertheless, he acknowledged that he consumes alcohol to the point of intoxication approximately three times per year at family and social gatherings. Applicant consumed beer before going to work on various occasions.

Alcohol has caused Applicant difficulties at work and with the police. In February 2015, in addition to a random urinalysis for marijuana, he was administered a random breathalyzer test for alcohol. He failed the breathalyzer test. He was suspended under the collective bargaining agreement, and referred to the company's EAP. While in the EAP, he again failed a breathalyzer test. In April 2015, Applicant's employment was terminated. In May 2016, after Applicant was stopped by the police, he was charged, in part, with an open container. The charge was eventually dismissed. AG ¶¶ 22(a), 22(b), and 22(c) have been established, and AG ¶ 22(e) has been partially established because, while there has been no diagnosis with alcohol use disorder, Applicant failed to follow the EAP guidelines by continuing to consume alcohol while in the program.

The guideline also includes several examples of conditions under AG ¶ 23 that could mitigate security concerns:

(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.

None of the mitigating conditions apply. Applicant routinely and frequently consumed alcohol, including before going to work on various occasions; he consumed alcohol to the point of intoxication approximately three times per year; he failed breathalyzer tests; he was terminated from employment; and he was arrested. Applicant's behavior, stemming from his association with alcohol, has not been infrequent, and the circumstances developed do not appear to be unusual. Applicant has never acknowledged that there is a pattern of maladaptive alcohol use, and he has failed to provide evidence of actions that he may have taken to overcome the problem. Other than his failed EAP program, he has not participated in a counseling or treatment program. Applicant said that he now only consumes one six-pack of beer every 1-2 weeks. He claimed that his last use of alcohol occurred at dinner, the night before his October 2017 OPM interview, when he consumed two beers. Applicant has not demonstrated a clear and established pattern of modified consumption or abstinence. Accordingly, under the circumstances, there remain doubts on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for 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 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 guideline also includes examples of some conditions that could raise security concerns under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personal 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;

(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;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States; and

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

My discussions related to Applicant's Drug Involvement and Substance Misuse, and Alcohol Consumption are adopted herein. As noted above, Applicant admittedly possessed and used marijuana, both before and after he was granted a security clearance; he possessed Adderall® and Suboxone without a prescription; on two separate occasions, he tested positive for marijuana during random urinalyses conducted

by his employer; he was arrested and charged with possession of marijuana, 1st offense; possession of paraphernalia – not syringes; prescription violation; and open container. In October 2017, Applicant told an OPM investigator that he did not plan on stopping his usage of marijuana.

In addition, Applicant started drinking 6-8 beers on a daily basis when he was 14-years old. In October 2017, he denied that he had a problem with alcohol, and indicated that his beer consumption had been reduced to one six-pack every 1-2 weeks. Nevertheless, he acknowledged that he consumes alcohol to the point of intoxication approximately three times per year at family and social gatherings. Applicant consumed beer before going to work on various occasions. Alcohol has caused Applicant difficulties at work and with the police. In February 2015, in addition to a random urinalysis for marijuana, he was administered a random breathalyzer test for alcohol. He failed the breathalyzer test. He was suspended under the collective bargaining agreement – in violation of a written commitment made by him to his employer as a condition of employment – and referred to the company’s EAP. While in the EAP, he again failed both his drug urinalysis and his breathalyzer test. In April 2015, Applicant’s employment was terminated. In May 2016, after Applicant was stopped by the police, he was charged, in part, with an open container. AG ¶¶ 16(a), 16(e), and 16(f) have been established.

The guideline also includes one condition under AG ¶ 17 that could mitigate security concerns arising from Personal Conduct:

(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.

AG ¶ 17(d) minimally applies. Applicant eventually candidly admitted that he did not disclose his full history of marijuana use because he did not want to lose his job, and he also admitted that he was not candid during an earlier OPM interview because he was scared and did not want to lose his security clearance because he would also lose his job. To date, other than the failed EAP program, there is no evidence that Applicant has obtained counseling or treatment. Under the circumstances, Applicant’s actions continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁷

There is some evidence mitigating Applicant's conduct. Applicant is a 26-year-old employee of a defense contractor. He has been serving as a welder with his current employer since May 2015. A 2010 high school graduate, Applicant received college credits over a four-year period, but did not earn a degree. He was granted a security clearance in January 2016.

The disqualifying evidence under the whole-person concept is more substantial. Applicant admittedly purchased, possessed and used marijuana, both before and after he was granted a security clearance; he possessed Adderall® and Suboxone without a prescription; he ignored his responsibilities regarding drugs and alcohol under a collective bargaining agreement and was terminated from employment after he tested positive for marijuana during two random urinalyses and breathalyzer tests conducted by his employer; he was arrested and charged with possession drugs, including marijuana, Adderall® and Suboxone; possession of paraphernalia; and open container. He initially lied about the true extent of his substance abuse because he feared losing his job or his security clearance, but he told an OPM investigator that he did not plan on stopping his usage of marijuana. Applicant did not alter his declared intent until after he received the SOR. He consumes alcohol to the point of intoxication approximately three times per year, and he consumed beer before going to work on various occasions.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his Drug Involvement and Substance Abuse concerns, Alcohol Consumption concerns, and his Personal Conduct issues. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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:

AGAINST APPLICANT

²⁷ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Subparagraphs 1.a. through 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraphs 1.e. and 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraphs 1.h. and 1.i.:	Against Applicant

Paragraph 2, Guideline G: AGAINST APPLICANT

Subparagraphs 2.a. through 2.c.: Against Applicant

Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraphs 3.a. through 3.c.: Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge