



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



In the matter of:)
)
) ISCR Case No. 18-01490
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Leon Schachter, Esq.

08/12/2019

Decision

GARCIA, Candace Le’i, Administrative Judge:

Applicant mitigated the alcohol consumption security concerns, but he did not mitigate the security concerns involving personal conduct and drug involvement and substance misuse. Eligibility for access to classified information is denied.

Statement of the Case

On June 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline G (alcohol consumption), H (drug involvement and substance misuse), and E (personal conduct). The action was taken 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on July 10, 2018, and requested a hearing before an administrative judge. The case was assigned to me on November 1, 2018.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on November 29, 2018, scheduling the hearing for January 16, 2019. I convened the hearing as scheduled.

Without objection, the Government amended the SOR pursuant to E3.1.17 of the Directive, to replace “2006” with “2009” in SOR 3.b; delete “and that you misused the prescription medication Oxycodone in December 2015” in SOR 3.d and 3.i; and delete “and Oxycodone” in SOR 3.e and 3.h. I marked the Government’s discovery letter and list of exhibits as Hearing Exhibits (HE) I and II, and Applicant’s list of exhibits as HE III. Government Exhibits (GE) 1, 3, and 4 were admitted in evidence without objection. (Tr. at 7-8, 15-20).

Applicant objected to portions of GE 2 consisting of Another Government Agency’s (AGA) clearance decision statement, two reports of polygraph examination, and a final outcome of appeal. He argued that these four documents were unauthenticated and he did not have an opportunity to cross-examine the individuals who made the adverse statements against him. I overruled Applicant’s objection and admitted GE 2 in evidence. Applicant testified, called four witnesses, and submitted Applicant’s Exhibits (AE) A through E, which were admitted in evidence without objection. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on January 28, 2019. (Tr. at 7-8, 15-20, 205, 231).

Findings of Fact

In his response to the SOR, Applicant admitted SOR 1.a and 3.b. He denied the remaining SOR allegations. Applicant is 63 years old. He married in 1978, divorced in 2006, remarried in 2010, and divorced in 2012. He has three adult children. Two serve in the U.S. military and the third is a state trooper. (Response to the SOR; Tr. at 8, 49-51, 57, 63, 67, 83-85, 158-160; GE 1, 2, 3, 4).

Applicant earned a bachelor’s degree from the U.S. Military Academy at West Point (West Point) in 1978 and two master’s degrees, in 1985 and 1991. He was commissioned as an infantry officer and served in the U.S. Army from 1978 to 1985, when he was honorably discharged. He has since worked for various DOD contractors. As of the date of the hearing, he worked as a consultant for a DOD contractor since October 2018. He was first granted a DOD security clearance in 1974. (Tr. at 5-6, 51-57, 158-160; GE 1, 2, 3, 4; AE A).

In 1998, Applicant was arrested and charged with driving under the influence (DUI) (SOR 1.a, 3.a). This was his first and only alcohol-related incident. He was separated from his first wife. He was at a restaurant with coworkers and he consumed six 12- to 16-ounce beers over the course of approximately four hours. He felt intoxicated. He wrecked his car as he drove home, after overcorrecting in an effort to avoid a deer. The police took him into custody and cited him for DUI. He was sentenced to probation before judgment; his driver’s license was suspended for approximately 90 days; he was fined; and he was ordered to make a donation to Mothers Against Drunk Driving. (Tr. at 62-66; GE 2, 3; AE D).

Applicant has not had any subsequent alcohol-related arrests or charges. He denied consuming alcohol to the point of intoxication and driving under the influence of alcohol and while intoxicated on numerous occasions between 2005 and 2015 (SOR 1.b, 1.c, 3.a). He denied the following information reflected in a May 2015 report of polygraph examination that: (1) he stopped consuming alcohol after his 2010 heart attack; (2) from November 2013 to November 2014, he consumed four vodka tonics, totaling one pint of vodka, over the course of an evening four to five nights weekly, and he drank until he felt intoxicated and then fell asleep three to four nights weekly; (3) he had most recently operated a vehicle under the influence of alcohol in February 2014, after attending a poker game with friends and consuming three to four two-ounce shots of bourbon over a four-hour period, and he would have likely been cited with DUI if he had been stopped by police on this occasion; (4) his girlfriend in November 2014 expressed concern about the amount of his alcohol consumption; and (5) in his lifetime, he had driven "a few dozen times" while feeling intoxicated but was undetected. (Tr. at 66-70, 112-124, 160; GE 2; AE D).

Applicant testified that he was either misinterpreted or he misspoke in May 2015. He testified that he continued to consume red wine in moderation after his heart attack. He acknowledged potentially consuming a pint of vodka over the course of a week from November 2013 to November 2014; he could not explain how he may have misspoken about drinking until he felt intoxicated then falling asleep three to four nights weekly during that period. He testified that his reference to the February 2014 occurrence was to a friend in the poker group who had consumed bourbon and "was slurring his words" when the friend telephoned him to notify him of a roadside sobriety checkpoint. He testified that he meant to state that he typically consumed a few drinks of red wine over the course of approximately six hours at periodic poker games with friends. He testified that his girlfriend did not express concern over the amount of his alcohol consumption in November 2014. (Tr. at 66-70, 112-124, 160; GE 2; AE D).

Applicant acknowledged that as a single man, from approximately 2006 to 2010 and since 2012, he has belonged to a social activities group for adults whose principal event consisted of weekly beach volleyball, where he would consume a beer or two over the course of a three- to four-hour evening game before driving home. From January to June 2015, he testified that he consumed around three to four vodka tonics or red wine nightly to treat his hip pain, as further discussed below, but he did not consider himself intoxicated on these occasions. Since his hip surgery in June 2015, he testified that he consumes two drinks a night, two nights a week. From mid-2015 to February 2017, he testified that he consumed a drink or two socially with friends. He testified that he was careful not to consume alcohol when he took Oxycodone, as further discussed below, because doing so "is an instant prescription for falling asleep" and "you're a danger to everybody" if you drink, take Oxycodone, and drive. (Tr. at 66-70, 112-124, 135-140, 160; GE 2; AE D).

Applicant denied that he knowingly circumvented appropriate methods to obtain his prescription heart medication, Crestor, twice--in 2013 and in 2014 (SOR 3.c). Though he had health insurance, his deductible was \$700, which he could not afford on his limited income as a consultant at the time. He testified that he informed his doctor of

such to no avail. He testified that he discussed his situation with his sister and she offered to send him her Crestor pills. On both occasions, she sent him a 30-day supply. He believed she had a prescription for Crestor, but he could not recall whether she, in fact, did or if she obtained a prescription for him. He testified that she paid a nominal amount, sent him her medication, and he sent her a check for \$65 to \$75. He testified that he did not think it was a big deal at the time. He does not anticipate this becoming a problem in the future since the generic Crestor is now more affordable and he would be eligible to qualify for Medicare. He also testified that he would utilize other methodologies, such as declare himself indigent, go to the emergency room, or obtain doctor samples, if necessary. He signed a statement of intent to not use any illegal substance or abuse prescription drugs in the future, and that violation would result in the revocation of his clearance. (Tr. at 85-90, 143-147, 174-175; GE 2; AE E).

Applicant denied using marijuana in December 2014, and he denied that this alleged use of marijuana occurred after he was granted a security clearance in September 2005 (SOR 2.a, 2.d, 3.a). A December 2015 report of polygraph examination reflects:

During pretest interview, [Applicant] reported that in December 2014, while tailgating at the Army vs. Navy football game at M&T Bank Stadium in Baltimore, MD, [Applicant] smoked marijuana. [Applicant] took a "hit" off of a marijuana joint that [Applicant's] friend passed around. [Applicant] did not purchase the marijuana or contribute money towards the purchase of the marijuana. [Applicant] was aware of the policy regarding no illegal drug involvement while holding a security clearance, but at the time, [Applicant] thought "why not?" [Applicant] initially did not report this incident during his previous polygraph on 06 May 2015 because he was embarrassed and believed it was a one[-]time event.

Applicant denied that the marijuana was passed around, testifying that it was just passed to him from his friend. He testified that he could not recall using the word "hit," but stated "I think I used the word drag. . . ." (Tr. at 70-73, 81-83, 109-110, 125-132, 147-155, 160-162, 167-177; GE 2; AE D).

Applicant also denied saying that he did not report his December 2014 marijuana use during his May 2015 interview with the AGA (SOR 3.f) due to "embarrassment." He testified, "I can't imagine that because I'm sure it came up" Rather, he testified that he did not disclose it in May 2015 because he did not consider it a "use" of marijuana, and he chose to volunteer the incident in December 2015. He continued:

Certainly not because of any embarrassment, although I will freely admit that it was not my finest hour. But I do believe that it was, in fact, a one-time event – and it was actually a one-time non-event.

He denied saying that he chose to disregard the policy against illegal drug use while holding a clearance. He testified, "I would never say something like 'why not.' That's just

not in my DNA to even respond to him.” (Tr. at 70-73, 81-83, 109-110, 125-132, 147-155, 160-162, 167-177; GE 2; AE D).

Applicant described the December 2014 marijuana incident as follows: he and a group of 40 other individuals, to include some of his West Point classmates, took a three- to four-hour bus ride to a football game. His hips “stiffened up quite dramatically” during the ride, but they were not “horrible, they were just stiff and very uncomfortable.” While tailgating, his friend, who had a medical marijuana card, offered him marijuana to provide relief for his hips. He “stupidly . . . went to try it” and concurrently with doing so, thought it was a bad idea. He testified:

I pulled the smoke into my mouth and . . . it was just so incredibly disgusting that I spit it out and had to rinse my mouth out, it was absolutely off-the-chart disgusting

He acknowledged that he took a “puff” of the marijuana cigarette, but insisted that he did not inhale or ingest it, he did not experience any effect from it, and he did not believe it rose to the level of “use.” He testified that he “ran up to the line and leaned over it, perhaps, but . . . I do not think I crossed that line.” He signed a statement of intent to not use any illegal substance or abuse prescription drugs in the future, and that violation would result in the revocation of his clearance. (Tr. at 70-73, 81-83, 109-110, 125-132, 147-155, 160-162, 167-177; GE 2; AE D, E).

Applicant denied misusing the prescription medication Xanax in February 2015. He also denied misusing the prescription medication Xanax after he was granted a security clearance in September 2005 (SOR 2.b, 2.d, 3.a). He testified that he went through a “manic depressive” period during the military deployments of two of his children, the first deployment of which occurred in 2004. He described himself as:

I couldn’t relax. I . . . would stand up and then just start pacing. And, or I was just like, I wouldn’t say lethargic, but . . . I found just found it hard to care about things. . . . I was crazed. . . . I was freaked out.

He testified that in February 2015, his then live-in girlfriend suggested that he take one of her prescription Xanax. He testified that he used one quarter of one pill. Within three or four days, he testified that he had an appointment with his primary care physician, who prescribed him Xanax. Though he felt the angst related to his children’s deployments for a number of years prior to 2015, he had not previously been prescribed Xanax. He used his prescribed Xanax for approximately three weeks and “it settled me.” (Tr. at 51, 73-77, 79-83, 110-111, 132-135, 147-155, 162-171; GE 2; AE D).

Applicant testified that he did not believe he misused his then girlfriend’s Xanax because he “used it in the manner that it was supposed to be used,” and he obtained a prescription of his own shortly after. He testified that it did not occur to him that such use was illegal, though in hindsight he saw that it was. He testified that in the future, he would go to the emergency room rather than use another individual’s prescription. He signed a statement of intent to not use any illegal substance or abuse prescription drugs

in the future, and that violation would result in the revocation of his clearance. (Tr. at 51, 73-77, 79-83, 110-111, 132-135, 147-155, 162-171; AE E).

Applicant denied misusing the prescription medication Oxycodone in December 2015. He also denied misusing the prescription medication Oxycodone after he was granted a security clearance in September 2005 (SOR 2.c, 2.d, 3.a). He cited to a series of health problems that started when he experienced a sudden cardiac arrest in June 2010. In December 2010, he then had a quintuple bypass surgery, and his recovery period lasted for approximately one year. In January 2015, he was diagnosed with degenerative problems in both of his hips, requiring bilateral hip replacement surgery. He underwent the first of two surgeries in June 2015, and the second in late 2015. He required an assistive walker, crutches, or a cane to walk, through March 2017. (Tr. at 57-62, 77-83, 110-111, 135-142, 162-167; GE 2; AE D).

Applicant was first prescribed Oxycodone by his doctor after his first hip surgery in June 2015. He took Oxycodone daily, as prescribed, from June 2015 through February 2017. As discussed above, though he consumed an alcoholic drink socially from mid-2015 to February 2017, he testified that he did not do so on the days he took Oxycodone. He testified, “[y]ou’d have good days and you’d have bad days . . . the pain was, sometimes, absolutely extraordinary and, sometimes, it was not bad.” He testified that his prescription for Oxycodone varied:

Sometimes they would be for . . . ten 325s, sometimes for 20 325s. And, and when I say 20, it’s 20 milligrams of oxycodone, combined with 325 milligrams of Motrin. Or, sometimes, 2,500 of Motrin and, sometimes, just like 20 milligrams of oxycodone with no Motrin. So it was all, it was, kind of, a mixed bag and it, you know, it was, you never knew what you were going to get.

He never had more than a month’s supply at a given time, so he had to obtain a refill at least monthly. To do so, he had to go through his doctor’s assistant, a nurse practitioner, to obtain a signed prescription. (Tr. at 57-62, 77-83, 110-111, 135-142, 162-167; GE 2; AE D).

In December 2015, Applicant was in severe pain. He testified that he was unable to obtain a refill for his then existing Oxycodone prescription because the nurse practitioner was on vacation, and neither his doctor nor any of the administrative staff returned his calls. His sister, who resided in a different state, offered to overnight him a bottle of her prescription Oxycodone, consisting of “twenty pills of each pill having ten milligrams of oxycodone and 325 milligrams of Motrin” He testified that “it got me over the hump. It was a gap fill, until such time, as I could get another . . . refill,” which occurred approximately less than a week later. (Tr. at 77-83, 110-111, 123-125, 135-142, 144, 162-167; GE 2; AE D).

As with Applicant’s use of his then girlfriend’s Xanax in 2015, he testified that he did not believe his use of his sister’s prescription Oxycodone constituted misuse. He stated:

[Y]ou could say that my . . . method of acquisition might not have been exactly right, and I, probably could've done that better, but in the grand scheme of things, I was using it for the purpose that it was intended.

(Tr. at 77-83, 110-111, 123-125, 135-142, 144, 162-167; AE D, E).

Applicant testified that he did not realize then that he was doing anything wrong. He testified that he has since learned that he is not to use another individual's prescription, and that in the future, he would go to the emergency room to obtain a new prescription. As of the date of the hearing, Applicant testified that the only medications he was taking were for blood pressure, cholesterol, and blood thinner. He signed a statement of intent to not use any illegal substance or abuse prescription drugs in the future, and that violation would result in the revocation of his clearance. (Tr. at 77-83, 110-111, 123-125, 135-142, 144, 162-167; AE D, E).

Applicant maintained that at the time of the marijuana incident in December 2014, his use of his then girlfriend's Xanax in February 2015, and his use of his sister's Oxycodone in December 2015, he was eligible for a security clearance but he did not, in fact, have one. He testified that he understood that his clearance was inactive because he had been previously read off all classified programs and was not read back on until around 2016. When confronted with the AGA's October 2016 clearance decision statement, which reflects that he had "been in SCI access" with the AGA since September 2005, and he was granted eligibility for access to SCI by the U.S. military in December 2010, he responded that any information reflecting that he was in continuous access was "news to me." He also testified that his interviews became "somewhat contentious," and he did not have an opportunity to appeal the eventual unfavorable 2016 AGA decision because he did not receive the appeal documents in the mail before the appeal period lapsed. (Tr. at 70-73, 81-83, 109-110, 125-132, 147-155, 160-162, 167-177; GE 1, 2).

Two of Applicant's character witnesses, as further discussed below, testified that they believed Applicant had a security clearance in December 2014. One witness was Applicant's supervisor from October 2018 to the date of the hearing. This witness testified that he assisted Applicant with obtaining employment in October 2014 with the DOD contractor for whom Applicant worked until October 2018, and he believed Applicant's work there required a clearance from its inception. A second witness worked for the same employer as Applicant in 2014, but in a different sector. This witness testified that he was told that Applicant had "a Top Secret SCI clearance and he was over in the cyber-division for two years -- 2014 and 2015 -- as a senior capture manager." (Tr. at 178-204; AE A, C).

Since Applicant did not believe he used marijuana in 2014 or misused Xanax in 2015, he testified that he did not falsify his responses to sections 23a and 23b of his March 2015 security clearance application (SCA) or section 23 of his November 2015 SCA (SOR 3.d, 3.e, 3.g, 3.h, 3.i). He testified that he did not falsify information during a May 2015 interview with the AGA, when he failed to disclose his 2014 marijuana use (SOR 3.f). He also testified that he did not falsify his response to section 23 of his

August 2017 SCA since he did not believe his misused either Xanax or Oxycodone (SOR 3.k). Sections 23a and 23b of his March 2015 SCA inquired, respectively, about the illegal use of controlled substances, to include prescription drugs, in the seven years prior to the date of the SCA, and any illegal use of a controlled substance while possessing a security clearance. Section 23 of his November 2015 SCA inquired about illegal drug use or drug activity, to include the intentional misuse of prescription drugs, in the seven years prior to the date of the SCA, and any illegal use or other involvement with a drug or controlled substance while possessing a security clearance. Section 23 of his August 2017 SCA inquired about the intentional misuse of prescription drugs in the seven years prior to the date of the SCA. (Tr. at 90-99, 108-111, 147-155. 167-171; GE 1, 2, 3).

Applicant, however, listed his December 2014 marijuana use in response to section 23 of his August 2017 SCA, which inquired whether he had illegally used a drug or controlled substance in the seven years prior to the date of the SCA. He marked "Yes," listed "THC (Such as marijuana, weed, pot, hashish, etc.)" and explained:

I was at a tailgate for the Army-Navy Game on Dec 13th, 2014 and with a bunch of friends in the parking lot; a friend was smoking a joint and passed it to me. I took one puff. This was the only instance. . . . One puff, one time. I am completely at a loss to explain why.

When asked whether he intended or not to use marijuana in the future, he noted, "No, this was a stupid, mindless aberration." He provided no commentary that he did not inhale or ingest the marijuana, that he did not experience any effect from it, or that he did not believe it rose to the level of "use." (Tr. at 70-73, 81-83, 109-110, 125-132, 147-155, 160-162, 167-177; GE 1, 2).

Applicant denied that he stated during an interview with the AGA in December 2015 that he intended to violate a state's handgun registration laws by not registering his handguns, as required. He testified that he intended to state that he simply had not gotten around to doing so. He testified that he prioritized his work and health issues at the time, but he had no intent to keep unregistered guns. He testified that he complied with the registration laws in November 2016 and registered his one handgun, as he had given his second one to his son who is a state trooper. (SOR 3.j). (Tr. at 101-108, 155-158; GE 2)

In August 2009, Applicant paid a prostitute for sex. He testified that this was the only instance he did so. He was single. His friend suggested it after Applicant was lamenting about his dating life. He testified that he was stupid and unaware of the ramifications of his actions, though he knew his conduct was illegal. He has no future intentions of repeating such conduct. (SOR 3.b). (Tr. at 83-85, 142-143; GE 2).

Applicant's witnesses described him as generous, trustworthy, reliable, and loyal. They each testified that they reviewed the SOR. Two witnesses referred to Applicant as a lifelong friend, having known him since their simultaneous attendance at West Point in the 1970s. Both indicated that they have seen Applicant at least once monthly over the

past 10 years. One indicated that he was surprised about the accuracy of the SOR, given his interactions with Applicant. The other indicated that he had never observed Applicant consume alcohol to excess, use marijuana, or misuse prescription drugs. This witness testified that he was unaware of Applicant's 1998 DUI and alleged 2014 marijuana use until he saw the SOR, and that he organized the group of 40 to 50 people that attended the football game in December 2014, where Applicant allegedly used marijuana. This witness testified that he held a security clearance his entire adult life, and he knew that illegal drug use and the misuse of prescription drugs was not permitted while holding a clearance. If the SOR allegations were proven to be accurate, he believed they were situational and not reflective of Applicant's overall character. (Tr. at 25-48, 178-204; AE B, C).

The third witness, as previously discussed, consisted of the individual who was Applicant's supervisor from October 2018 to the date of the hearing. The witness referred to Applicant as his best friend, having known him since 1996. Applicant has, at various times since 2006, worked for this witness. In addition to testifying that Applicant's position with the employer for whom Applicant worked from October 2014 to October 2018 required a clearance from its inception, the witness also testified that Applicant's position in 2013 when Applicant worked for the witness as a consultant required a clearance. He described Applicant's work performance as impeccable. He testified that he socialized with Applicant at monthly poker games, where he observed Applicant consume alcohol responsibly. He indicated that he did not observe Applicant misuse prescription drugs or use illegal substances. (Tr. at 178-193; AE A, C).

The fourth witness also referred to Applicant as a lifelong friend, having first met him when they were coworkers from 1997 through 2006. From 2006 to 2014, the witness and Applicant kept in touch through an occasional email. In 2014, as previously discussed, when Applicant and the witness once again worked for the same employer but in different sectors, the witness testified that he was told that Applicant had a clearance in 2014 and 2015. The witness then served as Applicant's supervisor from 2016 to 2018. He stated that Applicant's performance was exceptional. He described Applicant as a responsible drinker. He indicated that he was unaware that Applicant had allegedly used any illegal substance until he reviewed the SOR. He testified that Applicant told him that he took "a puff of marijuana, but was sickened by it immediately, and blew it out" in December 2014 at a football game. (Tr. at 193-204; AE C).

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out in AG 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

The guideline notes conditions that could raise security concerns under AG 22. The disqualifying conditions potentially applicable in this case include:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

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

Though Applicant only had one DUI charge, in 1998, his pattern of excessive alcohol consumption from 2005 to 2015 was concerning. AG 22(a) and 22(c) are applicable.

AG 23 provides the following relevant condition 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.

Applicant's sole DUI charge and excessive alcohol consumption are unlikely to recur. He testified that the only medications he was taking as of the date of the hearing were for blood pressure, cholesterol, and blood thinner. He also testified that since his hip surgery in June 2015, he consumes a drink or two socially with friends to two drinks a night, two nights a week. His witnesses, to include one who socializes with him at monthly poker games, testified that they consider him to be a responsible drinker. I find that his sole DUI and pattern of excessive alcohol consumption from 2005 to 2015 are not recent, are mitigated by the passage of time, and do not continue to cast doubt on his current reliability, trustworthiness, and judgment. AG 23(a) is applicable.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG 25. The following are potentially applicable in this case:

(a) any substance misuse (see above definition); and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana in December 2014. He disclosed such during his December 2015 interview with the AGA and on his August 2017 SCA. He also misused Xanax and Oxycodone in 2015. I do not find credible his testimony that he did not understand that his actions constituted a misuse of prescription drugs since he used it in the manner that it was supposed to be used and he obtained a prescription of his own or a refill of his existing prescription shortly after. His 2014 use of marijuana and his 2015 misuse of Xanax and Oxycodone occurred after he had been granted a security clearance in 2005. I do not find Applicant's testimony credible that he did not understand that he had a security clearance in 2014 and 2015, when he used marijuana and misused Xanax and Oxycodone. AG 25(a) and 25(f) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG 26. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(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.

Applicant failed to take responsibility for his 2014 marijuana use, despite disclosing it during his December 2015 interview with the AGA and on his 2017 SCA. He failed to take responsibility for his 2015 misuse of his then girlfriend's Xanax and his

sister's Oxycodone. He failed to take responsibility for using marijuana in 2014 and misusing Xanax and Oxycodone in 2015 after he had been granted a security clearance in 2005. None of the mitigating conditions have been established.

Guideline E, Personal Conduct

AG 15 expresses the security concern pertaining to personal conduct:

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. . . .

AG 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

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

(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; and

(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

Applicant displayed untrustworthiness, questionable judgment, and unreliability with his pattern of excessive alcohol consumption from 2005 to 2015; his payment of a prostitute for sex in 2009; his failure to utilize appropriate methods to refill his prescription Crestor rather than paying his sister for and using hers in 2013 and 2014; his failure to list his 2014 marijuana use and his 2015 misuse of Xanax, after being granted a security clearance in 2005, on his March and November 2015 SCAs; failure to disclose his 2014 marijuana use during his May 2015 interview with the AGA; his indication during a December 2015 interview with the AGA that he intended to violate state handgun registration laws; and his failure to list his 2015 misuse of Xanax and Oxycodone on his August 2017 SCA.

As previously discussed, I do not find Applicant credible in his claims that he did not use marijuana in December 2014, he did not misuse Xanax and Oxycodone in 2015, and he did not understand that he had a security clearance in 2014 and 2015 when he used marijuana and misused Xanax and Oxycodone. As such, I find that he intentionally falsified his March and November 2015 SCAs, his May 2015 interview with the AGA, and his 2017 SCA. AG 16(a), 16(b), and 16(e)(1) are established.

I have considered all of the mitigating conditions under AG 17 and considered the following relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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;
- (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
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I find that AG 17(c) and 17(e) are established for: the alcohol consumption security concerns alleged in 3.a, for the same reasons set forth above in my Guideline G analysis; the sole instance in 2009 in which Applicant paid a prostitute for sex, alleged in 3.b; the only two instances, in 2013 and 2014, when Applicant failed to utilize appropriate methods to refill his prescription Crestor, alleged in 3.c; and his clarified intention concerning his compliance with state handgun registration laws, alleged in 3.j, since he complied with such laws in November 2016.

However, for the same reasons set forth above in my Guideline H analysis, AG 17(a), 17(c), 17(d), and 17(e) are not established for the drug involvement and substance misuse security concerns alleged in 3.a. For the reasons stated above, I also find that AG 17(a), 17(c), 17(d), and 17(e) are not established for 3.d, 3.e, 3.f, 3.g, 3.h, 3.i, and 3.k. Applicant did not make any prompt or good-faith efforts to correct the relevant falsifications on his SCAs from March 2015, November 2015, and August 2017 and during his May 2015 interview with the AGA. He continued to dodge responsibility for his use of marijuana in 2014 and his misuse of Xanax and Oxycodone in 2015 while holding a security clearance. His reliability, judgment, and trustworthiness remain questionable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G, H, and E in my whole-person analysis. I considered Applicant's honorable service in the U.S. Army, and his employment with DOD contractors since his military discharge. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns involving personal conduct and drug involvement and substance misuse.

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: Subparagraphs 1.a - 1.c:	FOR APPLICANT For Applicant
Paragraph 2, Guideline H: Subparagraphs 2.a - 2.d:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline E: Subparagraph 3.a: Subparagraphs 3.b - 3.c: Subparagraphs 3.d - 3.i: Subparagraph 3.j: Subparagraph 3.k:	AGAINST APPLICANT Against Applicant For Applicant Against Applicant For Applicant 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge