DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 18-01545
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

11/08/2019

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Decision

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GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On April 22, 2014, Applicant applied for a security clearance and submitted a Questionnaire For National Security Positions (SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to those interrogatories on June 20, 2018. On December 31, 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* (AG) (December 10, 2016) 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 G (Alcohol Consumption), H (Drug Involvement and Substance Misuse), 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.

In a notarized statement dated July 5, 2019, 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 August 8, 2019, and he was afforded an opportunity, within a period of 30 days, 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 August 12, 2019. His response was due on September 11, 2019. Applicant did not submit any response to the FORM. The case was assigned to me on October 16, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with some comments, nearly all of the factual allegations pertaining to alcohol consumption (SOR ¶¶ 1.a. through 1.g.), drug involvement and substance misuse (SOR ¶¶ 2.a., 2.b., and 2.d.); and personal conduct (SOR ¶¶ 3.b. and 3.c.). He either denied or failed to address the remaining allegations. Applicant's admissions and accompanying 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:

Background

Applicant is a 25-year-old employee of a defense contractor. He has been serving in an unspecified position with his current employer since August 2015. A 2013 high school graduate, he earned some college credits, but no degree. He has never served with the U.S. military. He has never held a security clearance. Applicant has never been married, and he has no children.

Alcohol Consumption

Applicant commenced drinking alcohol out of curiosity in 2006, when he was about 12 years old, and he continued doing so until 2008. He generally stole a beer from his father's refrigerator two to three times per year. Starting in 2008, his consumption steadily increased, and he went from two beers every three months, to five of six beers every three months, to eight to ten beers every two weeks. By August 2013, Applicant was consuming 15 to 30 beers on weekends at college. From May 2014 until January 2016, he drank 10 to 20 beers on weekends. In January 2016, he was drinking on a nightly

basis, and on least one occasion, he consumed a 30-pack of beer over a two-day period. (Item 4, at 123) His early curiosity about alcohol transitioned into believing that drinking was "cool" and fun. He also enjoyed being "buzzed" or drunk. On at least six or seven occasions, Applicant's drinking resulted in his intoxication, and caused him to black out. (Item 3, at 12-13) Applicant acknowledged that he would "get the shakes [and] need a drink." (Item 4, at 8)

On October 20, 2016, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). Applicant acknowledged that his use of alcohol occurred only on the weekends. Because he became calm when intoxicated, he drank seven to eight beers to intoxication about once every month. He denied having a problem with drinking, and he expressed an intention not to stop doing so. (Item 3, at 6)

Applicant's relationship with alcohol has resulted in several incidents involving either injury to himself or being charged with various violations. In January 2015, he was observed by the police holding a beer in the back seat of a vehicle. He was issued a summons for possession of alcohol by minor. After pleading guilty to the charge, Applicant was ordered to attend an eight-hour alcohol class sponsored by Mothers Against Drunk Driving (MADD). Less than five months later, he was again issued a summons for possession of alcohol by minor when he was observed walking on a college campus with a beer in his hand. After pleading guilty to the charge, he was ordered to complete eight hours of community service. (Item 3, at 5-6) In the spring of 2015 or 2016, while at a casino, Applicant became intoxicated, blacked out, got thrown over a blackjack table, and he was transported to the hospital emergency room. (Item 4, at 7, 11, 53; Item 1)

In January 2016, Applicant consumed 10 to 12 beers and 3 to 4 shots of liquor within a two-to-five-hour period at a house party. The following morning, he consumed additional liquor. He then drove his vehicle, not caring that he was under the influence of alcohol. He either ran a stop-sign and struck a moving vehicle, or he rear-ended a stopped vehicle, depending on which version of the incident Applicant reported. When the police arrived, they administered Applicant a field sobriety test, which he failed. He was arrested and charged with driving under the influence (DUI). He was administered two breathalyzer tests, both of which registered high percentages: 0.17 percent and 0.21 percent. (Item 3, at 6, 12) He entered a plea of guilty to the DUI. Applicant was ordered to attend another MADD program; directed to obtain alcohol treatment; required to have an ignition interlock device installed on his vehicle for six months; and his operator's license was suspended for 60 or 90 days. (Item 3, at 6, 12)

Applicant acknowledged that his 2016 DUI was the result of an "irresponsible and reckless mistake." In his Answer to the SOR, He added: "I regard the situation though unfortunate, as a catalyst to the curbing of my behavior in a much more responsible light." (Item 1)

Nevertheless, between July 2016 and October 2016, Applicant operated a vehicle on five or ten occasions while he was under the influence of alcohol. He did so because he thought he could manage driving, he was not traveling too far, or he did not care that he was under the influence. (Item 3, at 13) In July or August 2016, while under the

influence of alcohol, Applicant fell off a roof, and he was hospitalized for stitches on his face and hand. (Item 4, at 7, 11; Item 1) On at least one occasion, after drinking in the morning, he waited until the afternoon before trying to drive. That effort resulted in the ignition interlock device recognizing that Applicant had consumed alcohol, and he failed to unlock it. (Item 4, at 123; Item 1)

On October 14, 2016, Applicant enrolled in the intensive outpatient program of a substance abuse treatment program. During his intake assessment, he acknowledged that his initial use of alcohol occurred when he was 10 years old, that regular use occurred at the age of 19, and that over the six-month period preceding the assessment, he had been drinking up to two beers per day, with binge drinking on the weekends. (Item 4, at 5) He underwent individual and group therapy. During the program, Applicant was diagnosed under the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Ed. (DSM-V), with Alcohol Use Disorder, Severe. (Item 4, at 19, 123)

Despite his participation in the program, Applicant admitted continuing his reduced consumption of alcohol on several occasions in October and December 2016. (Item 4, at 49-50, 55) On December 19, 2016, the intensive outpatient treatment program ceased, and Applicant was recommended to continue his goal of reduced alcohol intake, and to continue ongoing substance abuse treatment on a weekly basis for individual therapy and group therapy for additional support. He was prescribed naltrexone – a medication used to treat alcoholism by reducing the urge to drink alcohol – as needed. (Item 4, at 46) Applicant denied the SOR allegation and he contends that he completed the program to its completion, and the Government offered no evidence that Applicant had failed to follow treatment advice. As recently as June 2018, Applicant admitted that he continued to consume two to four drinks per weekend or less. (Item 3, at 16)

Drug Involvement and Substance Misuse

Applicant was also a recreational substance abuser whose primary substances of choice were marijuana, cocaine, and amphetamines. In addition, although not alleged in the SOR, Applicant admitted that he was a frequent user of unspecified hallucinogens. (Item 4, at 6, 41) As noted above, on October 14, 2016, Applicant enrolled in the intensive outpatient program. During his intake assessment, in addition to the information furnished regarding alcohol, he acknowledged that he commenced using marijuana in approximately 2004, when he was 15 years old, and continued his regular use of marijuana until September 2016. He used cocaine on various occasions from at least an unspecified date in 2015 until at least October 2016. (Item 4, at 5-6; Item 1)

Despite his participation in the program, Applicant's urine toxicology screens tested positive for cocaine on several occasions: October 24, 2016; October 25, 2016; October 28, 2016; October 31, 2016; and November 1, 2016, and he admitted continuing his use of cocaine. (Item 4, at 55, 142-146) In addition, Applicant's urine toxicology screen tested positive for amphetamines on December 16, 2016. (Item 4, at 127; Item 1)

In his response to the interrogatories, Applicant acknowledged the use of Adderall – a combination medication containing four salts of amphetamine – which was also a

prescribed medication for someone other than himself, in February 2017. (Item 3, at 17) That acknowledgement was apparently the basis of the SOR allegation that he had misused Adderall. However, in his Answer to the SOR, Applicant clarified his response and claimed that he had made a mistake because of confusion on his part. He contended that the Adderall misuse was actually the same December 2016 incident reported as a result of his positive urine toxicology screen tested positive for amphetamines. During the program, Applicant was diagnosed under the DSM-V with Cocaine Use Disorder, a diagnosis he denied being aware of. (Item 4, at 120, 123; Item 1) Starting in January 2019, and continuing until March 2019, Applicant underwent drug screens ordered by a physician. All of the toxicology screens were negative. (Item 1 attachments)

Personal Conduct

On April 22, 2015, when Applicant completed his SF 86, he responded to certain questions pertaining to his illegal use of drugs or drug activity found in Section 23 – Illegal Use of Drugs or Drug Activity. The most significant question, and the one alleged in the SOR, was essentially as follows: In the last seven (7) years: "have you illegally used any drugs or controlled substances?" Applicant answered "no" to the question. (Item 2, at 24) He omitted and concealed his subsequently admitted use of marijuana. He certified that his response to that question was "true, complete, and correct" to the best of his knowledge and belief, but, because of his omission and concealment, the response to that question was, in fact, false. Applicant admitted the allegation. (Item 1) With respect to the cocaine aspect of the question, the Government failed to prove that Applicant had used cocaine at any time before he submitted the SF 86 in April 2015, and Applicant only admitted that he had used it in 2015 and 2016.

On June 20, 2018, when Applicant completed his responses to the interrogatories, he responded to a question pertaining to his illegal use of drugs or drug activity found in Question 1 – Drug Use. He was asked to provide a complete history of his use of any illegal narcotic, depressant, stimulant, hallucinogen (to include LSD or PCP), Cannabis (marijuana or Hashish), prescription drug without a valid prescription, and any misuse of a drug prescribed to you (e.g., taking more than the required dosage, etc.). Although he acknowledged his misuse of Adderall, he omitted and concealed his subsequently admitted use of marijuana and cocaine. He swore that his response to those that question was "true and correct" to the best of his knowledge and belief, but, because of his omissions and concealments, the response to that question was, in fact, false. Applicant admitted the allegation, and added that "the deliberate withholding of information I now realize was unbecoming and illustrates untrustworthiness. I believe at the time I was nervous and admittedly frightened of the consequences for disclosing that type of information." (Item 1)

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, "no 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. 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." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

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." "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))

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

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 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." (*Egan*, 484 U.S. at 531)

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." (*See* Exec. Or. 10865 § 7) 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 G, Alcohol Consumption

The security concern relating to the guideline 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 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;
>
> (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; and
>
> (e) the failure to follow treatment advice once diagnosed.

AG ¶¶ 22(a), 22(c), 22(c), 22(d), and 22(e) have all been established. AG ¶ 22(b) has not been established as there is no evidence of any alcohol-related incidents at work. Applicant's relationship with alcohol has seen him routinely binge drinking and becoming intoxicated. It has resulted in several incidents involving either injury to himself or being charged with various violations. He has been convicted and sentenced on three separate occasions for alcohol-related violations, including DUI. There were other incidents involving alcohol, such as falling off a roof and blacking out in a casino where no police or court authorities were involved. Despite completing court-mandated alcohol education and training, one effort to drive failed when the ignition interlock device in his car refused to unlock because it detected alcohol on him.

Applicant was diagnosed under the DSM-V with Alcohol Use Disorder, Severe. When the intensive outpatient treatment program ceased, Applicant was recommended to continue ongoing substance abuse treatment on a weekly basis for individual therapy and group therapy for additional support. Applicant has a substantial history of maladaptive alcohol use, and despite claiming that he wishes to conquer his relationship with alcohol, he continues to drink.

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. Despite three convictions for alcohol possession by minor (two in 2015) and DUI (in 2016), accompanied by a variety of sentences, including minimal overnight stays in jail; fines; attendance of MADD and other alcohol education classes; community service; a suspended operator's license; and the court-mandated installation of an ignition interlock device on his car, Applicant learned little if anything regarding drinking and driving. Rather than learning from the alcohol classes and considering the negative impact of his continuing alcohol-related conduct, he

returned to his pattern of alcohol consumption, albeit at a more modified level. As recently as October 2016, Applicant denied that he had a problem with alcohol, and he expressed an intention not to stop drinking alcohol.

As noted above, when the intensive outpatient treatment program ceased, Applicant was recommended to continue ongoing substance abuse treatment on a weekly basis for individual therapy and group therapy for additional support. He offered no evidence to indicate that he had followed the program recommendations. Applicant's maladaptive alcohol use continued for over a decade. Appellant has failed to demonstrate a clear and established pattern of modified consumption or abstinence, and under the circumstances, there remain doubts about his reliability, trustworthiness, and good judgment.

Guideline H, Drug Involvement and Substance Misuse

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, 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);
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> (b) testing positive for an illegal drug;
>
> (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
>
> (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder.

Applicant was admittedly a recreational substance abuser who regularly used marijuana, transitioned to cocaine, and experimented with amphetamines. During his participation in intensive outpatient treatment, his urine toxicology screens tested positive for both cocaine and amphetamines. Applicant was diagnosed under the DSM-V, with Cocaine Use Disorder. When the intensive outpatient treatment program ceased, Applicant was recommended to continue ongoing substance abuse treatment on a weekly basis for individual therapy and group therapy for additional support. He offered no evidence of having complied with that recommendation, thus limiting the weight of his successful completion of the initial program. AG ¶¶ 25(a), 25(b), 25(c), and 25(d) 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:

> (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; 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.

AG ¶ 26(b) minimally applies, but no other mitigating condition applies. Applicant regularly used marijuana and cocaine and experimented with amphetamines. As such, there was nothing infrequent about his marijuana or cocaine use, and there is no evidence to indicate that his use happened under such circumstances that it was unlikely to recur. Applicant now acknowledges his past drug involvement and substance misuse, and he has furnished documentary evidence that his recent urine toxicology screens tested negative for any of the identified substances, including marijuana, cocaine, and amphetamines. However, he offered no evidence to indicate that he has ended his relationships with his drug-using friends; or that he avoids the environment where drugs were used. Furthermore, he has not submitted a formal statement acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

A person should not be held forever accountable for misconduct in the past, but in this instance, the most recent drug involvement and substance misuse, was in December 2016, when his urine toxicology screen tested positive for amphetamines. Given his cavalier attitude towards laws, rules, and regulations, Applicant's use of marijuana, cocaine, and a prescription medication that was not prescribed for him, despite knowing that such use was prohibited by the Government, continues to cast doubt on his current reliability, trustworthiness, and 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 conditions that could raise security concerns under AG ¶ 16:

(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

(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.

My discussion related to Applicant's drug involvement and substance misuse is adopted herein. At the time Applicant completed his SF 86 in June 2015, he concealed any references to his history of drug involvement and substance misuse. He was more candid with the OPM investigator in October 2016. As recently as June 2018, when he responded to the interrogatories, he continued to conceal his marijuana and cocaine use, but did admit his misuse of an amphetamine. Normally an applicant's comments provide sufficient evidence to examine if his or her submissions were deliberate falsifications, as alleged in the SOR, or merely inaccurate answers that were the result of oversight or misunderstanding of the true facts on his or her part. Proof of incorrect answers, standing alone, does not establish or prove an applicant's intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the alleged falsifications or omissions occurred.

I have considered the entire record, including Applicant's admission of the SOR allegations. As noted above, Applicant did not controvert the falsification allegations. In his Answer to the SOR, Applicant admitted failing to disclose his illegal drug use in his 2015 SF 86. He noted that the "deliberate withholding of information I now realize was unbecoming and illustrates untrustworthiness." He added that he was nervous and admittedly frightened of the consequences for disclosing the truth, and he acknowledged it was an act of self-preservation. He did not claim that he misinterpreted the questions, or that he forgot his drug involvement and substance misuse. In other words, he intentionally concealed his substance misuse and falsified his responses. AG ¶¶ 16(a), 16(b), and 16(c) have been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
>
> (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.

Neither of the conditions apply. Applicant's false responses to the SF 86 inquiry occurred in April 2015, and his false responses to the interrogatories occurred in June 2018. He was candid with the OPM investigator in October 2016. It took nearly an additional year, until July 2019, when Applicant finally acknowledged his history of drug involvement and substance misuse when he completed his Answer to the SOR. However, before those SOR admissions, aside from his OPM candor, he made no efforts to correct the omissions, concealments, or falsifications associated with his earlier false responses. Applicant's attitude towards laws, rules, and regulations while seeking a security clearance, lasted approximately four years. Despite his claimed new maturity, Applicant's actions under the circumstances 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. (*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))

There is some evidence mitigating Applicant's conduct. Applicant is a 25-year-old employee of a defense contractor. He has been serving in an unspecified position with his current employer since August 2015. A 2013 high school graduate, he earned some college credits, but no degree. He has reportedly abstained from any drug involvement

and substance misuse since December 2016. Applicant finally disclosed his history of drug involvement and substance misuse when he answered the SOR in July 2019.

The disqualifying evidence under the whole-person concept is more substantial. Applicant admittedly was a regular marijuana and cocaine user, and he experimented with amphetamines. He routinely consumed alcohol to excess. In 2016, he was diagnosed under the DSM-V with Cocaine Use Disorder; and Alcohol Use Disorder, Severe. Between July 2016 and October 2016, he operated a vehicle on five or ten occasions while he was under the influence of alcohol. He did so because he thought he could manage driving, he was not traveling too far, or he did not care that he was under the influence. This latter explanation – that he did not care that he was under the influence of alcohol – is the most troubling, for it indicates that Applicant was aware of his situation.

Applicant attempted to conceal his drug involvement and substance abuse in his 2015 SF 86, and in his June 2018 responses to the interrogatories. While he was candid in October 2016, he continued to conceal the truth. He explained that his efforts were deliberate, and he acknowledged it was an act of self-preservation. Although Applicant was diagnosed with Alcohol Use Disorder, Severe, he continues to consume alcohol. Applicant's attitude towards laws, rules, and regulations, is unacceptable, especially for one who is an applicant for a security clearance.

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 alcohol consumption; drug involvement and substance abuse; and personal conduct. *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 G:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.d.:	Against Applicant
Subparagraph 2.e.:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.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.

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ROBERT ROBINSON GALES
Administrative Judge