



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 18-02806
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant’s psychological conditions have negatively impacted his judgment, reliability, and trustworthiness. He used marijuana as recently as spring 2019 while holding a security clearance, and he is currently on probation for felonious unlawful restraint committed in September 2016 when he was under the influence of alcohol. He raised doubts about his personal conduct by falsely denying any illegal drug involvement on his February 2015 security clearance application. Clearance is denied.

Statement of the Case

On May 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline I (psychological conditions), Guideline J (criminal conduct), Guideline H (drug involvement and substance misuse), Guideline G (alcohol consumption), and Guideline E (personal conduct). The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended;

DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on May 30, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 19, 2019, Department Counsel was ready to proceed to a hearing. On August 28, 2019, I scheduled a hearing for September 23, 2019, to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the hearing, 23 Government exhibits (GEs 1-23) were admitted in evidence. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on October 4, 2019.

I held the record open for one month after the hearing for post-hearing submissions from Applicant. Applicant submitted character reference letters from three co-workers, which were admitted without any objections as Applicant exhibits (AEs) A-C.

Summary of SOR Allegations

The SOR alleges the following under one or more of the AGs I (SOR ¶ 1), J (SOR ¶ 2), H (SOR ¶ 3), G (SOR ¶ 4), and E (SOR ¶ 5):

- A licensed psychologist diagnosed Applicant in May 2018 with bipolar disorder, attention deficit and hyperactivity disorder (ADHD), and borderline personality disorder, and opined that Applicant's bipolar disorder and borderline personality disorder negatively impact his judgment, reliability, stability, and trustworthiness (SOR ¶¶ 1.a and 5.a);
- Applicant was hospitalized as an inpatient for mental health reasons in at least 1989, 1995, 2005, 2014, and 2017 (SOR ¶¶ 1.b and 5.a);
- Applicant was charged with the following offenses: driving while intoxicated (DWI) in approximately 1981 (SOR ¶¶ 2.a, 4.a, 5.a); public intoxication in approximately 1982 (SOR ¶¶ 2.b, 4.a, 5.a); peace bond complaint - murder in approximately May 1988 while under the influence of alcohol (SOR ¶¶ 2.c, 4.a, 5.a); assault in approximately April 1989 while under the influence of alcohol (SOR ¶¶ 2.d, 4.a, 5.a); malicious damage in approximately May 1989 while under the influence of alcohol (SOR ¶ 2.e, 4.a, 5.a); threatening, breach of peace, bigotry, and assault of police officer in approximately December 1995 (SOR ¶ 2.f and 5.a); domestic violence and possession of a loaded handgun in approximately February 2005 (SOR ¶ 2.g and 5.a); breach of peace on April 2, 2014, for which he was sentenced to six months in jail, suspended, and two years of probation, which he violated (SOR ¶¶ 2.h and 5.a); violation of the conditions of release on April 12, 2014, for which

he was sentenced to one year in jail, suspended, and two years of probation which was terminated in 2017 for a violation (SOR ¶¶ 2.i and 5.a); disorderly conduct in approximately May 2014 (SOR ¶¶ 2.j and 5.a); and felonious unlawful restraint in September 2016 while under the influence of alcohol, for which he was sentenced to three years in jail, suspended, and three years of probation to November 2020 (SOR ¶¶ 2.k, 4.a, and 5.a);

- Applicant used marijuana on various occasions between 2005 and November 2015 while holding a security clearance (SOR ¶¶ 3.a and 5.a); tested positive for marijuana on various occasions, including in November 2012, January 2014, April 2014, and October 2015 (SOR ¶¶ 3.b and 5.a); and was diagnosed with cannabis abuse or cannabis abuse disorder in November 2012 and October 2015 (SOR ¶¶ 3.c and 5.a);
- Applicant was diagnosed as alcohol dependent in July 1989 (SOR ¶¶ 4.b and 5.a) and with alcohol use disorder in October 2015 (SOR ¶¶ 4.c and 5.a); and
- Applicant deliberately falsified his December 2005 (SOR ¶ 5.b) and February 2015 (SOR ¶ 5.c) security clearance applications by responding negatively to a question concerning any illegal drug use in the last seven years and not disclosing his marijuana use.

When Applicant answered the SOR, he admitted that he has mental health issues (bipolar disorder, ADHD, anxiety, post-traumatic stress disorder (PTSD), and borderline personality disorder), but he denied that his bipolar disorder affects his trustworthiness. He admitted that he has been hospitalized on an inpatient basis five times since 1989 for his mental health issues, which “require tending to on a regular basis and have led to hospitalization in the past during trials (including many errors) of a variety of mediations in conjunction with other confounding factors.” He admitted the alleged criminal charges with the exception of the May 1988 charge of peace bond complaint – murder. He had no record of or recall of the offense. He attributed the criminal charges to his alcoholism, and to difficulties finding the proper medication balance for his mental health issues.

Applicant admitted using marijuana on various occasions between November 2012 and November 2015, and testing positive for marijuana on the four occasions alleged. He denied that he used marijuana as early as 2005 or that he had been diagnosed with cannabis abuse or cannabis abuse disorder. Applicant admitted that he was diagnosed as alcohol dependent in July 1989, but he denied that he had been similarly diagnosed with alcohol abuse in October 2015. He asserted that he maintained abstinence from alcohol between May 14, 1989, and September 11, 2016. Applicant denied that he had falsified his security clearance application in December 2005, asserting that he had not used marijuana in the seven years preceding that clearance application, but he admitted that he had falsified his February 2015 security clearance application by not disclosing his marijuana use. He attributed his cannabis use to having had serious relationship difficulties, and to

his prescribed medications proving ineffective. He asserted that he has been prescribed medical marijuana since January 2017.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 56-year-old senior designer, who has been employed by a defense contractor since August 1990. He was granted a confidential-level security clearance in July 1991, and he has held a secret-level clearance since September 1996. His clearance was renewed most recently in August 2008. (GE 2; Tr. 44-45.)

Applicant has had several ex-wives and girlfriends. He and his fourth wife remarried in August 2019. (Tr. 79.) Applicant has an adult daughter from his first marriage and two adopted adult children from his second marriage. (GEs 2-3, 15-16, 19.)

Applicant was charged with driving while intoxicated (DWI) in June 1981 (SOR ¶ 2.a). He had consumed 12 beers while driving around. He was fined \$50 and ordered to attend a DWI school. In August 1982, he was charged with public intoxication after sharing 24 beers with a friend (SOR ¶ 2.b). He forfeited a \$35 bond for being drunk in public. (GEs 6, 20- 21.)

In April 1988, Applicant and his first wife divorced after three years of marriage, partially because of his drinking. On May 15, 1988, his ex-wife complained to the police that he had assaulted her (pushed her, struck her across the face, knocked her to the ground, and threatened to kill her). The police noticed scratches on her neck and other signs that she had been assaulted. Two days later, Applicant was arrested and booked into the county jail on a peace bond complaint of intent to murder his ex-wife (SOR ¶ 2.c). In the jail, he exhibited signs of polysubstance abuse, and he admitted he had consumed 24 beers before his arrest (SOR ¶ 4.a). He posted a bond of \$2,000 on May 23, 1988, and was released from custody. On June 8, 1988, he pled guilty to assault by contact on his ex-wife and was fined \$200 plus costs. (GEs 6, 21.) Applicant testified at his hearing that his ex-wife “broke into the house.” (Tr. 62.)

In September 1988, Applicant married his second wife, and one month later, he enlisted in the U.S. military. On April 22, 1989, he was arrested for breach of peace and third degree assault after he started a fight with another person at a local motel (SOR ¶ 2.d). Applicant was intoxicated and smelled strongly of alcohol when he was arrested. (GE 7.) During a subject interview with a Defense Investigative Service (DIS) special agent in May 1989, Applicant volunteered that he had consumed eight to ten mixed drinks containing vodka before the incident and that he was fined \$35. He also reported an arrest in May 1989 for malicious damage (SOR ¶ 2.e). After consuming a gallon of vodka at a concert, he started an argument and dented the hood of the victim’s vehicle. He was required to pay \$200 in restitution and \$43 in court fees. (GE 21.)

At the request of his military command, Applicant was evaluated at his base's counseling and assistance center on May 22, 1989. He acknowledged responsibility for two pre-service alcohol-related incidents for which he had a pre-service waiver. He indicated that he had been drinking regularly since age 16, and that his drinking had doubled while in the military. He expressed a desire to abstain from alcohol, and reported drinking more than intended, loss of control, increasing tolerance, and some withdrawal symptoms. The screener opined that Applicant was "psychologically dependent" on alcohol and that he was likely to continue to abuse alcohol unless he completed Level III inpatient treatment. It was recommended that he attend a minimum of three Alcoholics Anonymous (AA) meetings per week and be placed on a supervised Antabuse program in the interim. Applicant satisfactorily completed a 36-hour alcohol and drug education course on June 23, 1989. On June 29, 1989, he was processed for disqualification from his military program because of his alcohol problem and was advised that failure to complete the Level III drug and alcohol abuse program would be grounds for his separation from the military. (GE 5.)

On his admission to the Level III program in July 1989, Applicant was diagnosed with substance abuse disorder (SOR ¶ 4.b). He reported a significant increase in tolerance since January 1989. He was admitted to a structured program of group therapy, individual counseling, and education with a strong AA component. He was cautious at first but was later able to identify factors impacting his alcohol use and to initiate actions to address his problem. He was active in developing his aftercare plan, which included meeting with his command's drug and alcohol program advisor on a weekly basis for one year; participating in a 12-step program; submitting to urinalysis screening at least four times per month for one year; and attending a formal aftercare group two hours a week for 12 weeks. He was returned to active duty in August 1989 with a diagnosis of alcohol dependence. (GE 5.)

Applicant and his second wife divorced in early November 1989. (GEs 1-2.) On November 9, 1989, Applicant was evaluated by a military clinical psychologist because of suicidal ideation. He reported abstinence from alcohol since August 1989 with the help of nightly AA meetings, but admitted that he had started thinking about suicide about two months prior. He exhibited a depressed mood with a constricted affect. He was diagnosed with alcohol dependence (alcoholism) in remission, and avoidant personality traits, but found fit for full duty. He was advised to obtain an AA sponsor and to receive group and individual therapy through the command's psychiatry department. In December 1989, Applicant was dis-enrolled from his weekly aftercare group for failing to show for a scheduled session for the second time. (GE 5.) Applicant was discharged from his military service obligation in March 1990. (GE 1.)

Applicant was married to his third wife from June 1992 to October 1995. (GEs 1-2.) There is no evidence that he had any legal or substance abuse problems during that time. In December 1995, Applicant was arrested for threatening, breach of peace, bigotry, and assault on a police officer (SOR ¶ 2.f). (GE 8.) No details are in evidence about the offense.

Applicant and his fourth wife married in June 1997, but they separated around October 2000 or 2001 and were divorced in approximately 2006. (GEs 1, 22.) In February 2005, he was arrested for his own safety following an incident involving a girlfriend. Applicant appeared to be suicidal. He was admitted to a psychiatric hospital (SOR ¶ 1.b), where he was diagnosed with bipolar disorder. He indicated during a June 2006 interview with an Office of Personnel Management (OPM) investigator that he spent four days in the hospital (GE 22), although he reported to a clinical provider in 2012 that he was in the hospitalized for two weeks in 2005. (GE 17.) Applicant was charged with possession of a loaded handgun and domestic violence for the incident involving his girlfriend (SOR ¶ 2.g), but the charges were *nolle prossed* in March 2005. (GEs 3, 22.)

While on a temporary work assignment for his current employer in approximately July 2005, a co-worker told Applicant that he should try marijuana to relax. Applicant took one or two puffs from a marijuana cigarette offered him by the co-worker. From November 2005 to 2006, Applicant used marijuana with the son of his current spouse. Applicant liked the effect, but did not use any marijuana for the next three years. (GE 22.)

To renew his security clearance, Applicant completed a Questionnaire for National Security Positions (SF 86) on December 5, 2005. He indicated that he had consulted with a mental health professional from February 2005 to June 2005, and that he had been arrested in February 2005 for possession of a loaded handgun and domestic violence for which he had to complete violence education classes. He responded negatively to an inquiry concerning whether he had illegally used any controlled substance in the last seven years (SOR ¶ 5.b). (GE 1.) When he answered the SOR, Applicant denied falsifying his SF 86, stating that he had not used marijuana in the seven years preceding the application. After it was pointed out to Applicant at his hearing that his reported use of marijuana in July 2005 predated his December 2005 SF 86, Applicant explained that he “was thinking it was backwards,” i.e., that his drug use occurred after he completed his SF 86. (Tr. 70.)

From 2009 to the spring of 2015, Applicant used marijuana with acquaintances he met while playing disc golf. Between the spring of 2015 and February 2016, he used marijuana with his wife’s son on four occasions. Applicant was usually provided the marijuana that he used, but a few times he contributed money towards its cost. (GE 22.)

In January 2012, Applicant began taking several psychiatric medications prescribed for him by his primary care physician. On October 19, 2012, Applicant sought treatment from a behavioral health service, complaining of anxiety and depression. He reported sobriety from alcohol for the past 23 years. He was diagnosed with bipolar disorder, and referred for treatment at a psychiatric hospital. (GE 19; Tr. 50-51.) Applicant was formally discharged from the behavioral health service on January 3, 2013, for failure to attend any sessions beyond the initial assessment. (GE 20.)

Applicant began treatment at the psychiatric hospital on November 12, 2012, four days after the death of his sister (SOR ¶ 1.b). He reported a history of depression with outbursts of anger and deterioration of his condition for about a year. He denied any drinking since 1989, but admitted experiencing suicidal ideation daily. Applicant was

treated for four days in the facility's partial hospitalization program (PHP) and twelve days in its intensive outpatient program (IOP). Random screens were negative for alcohol (he reported attending AA) but positive for marijuana (SOR ¶ 3.b). After acknowledging that he needed to stop seeing his friends who use marijuana, he reported a relapse of marijuana use on December 19, 2012. At his discharge on December 21, 2012, Applicant was diagnosed on Axis I with bipolar I disorder – severe without psychotic feat – depressed; PTSD; cannabis abuse – unspecified; ADHD not otherwise specified; and alcohol dependence in sustained full remission. He was diagnosed on Axis II with antisocial personality disorder. At discharge, Applicant was assessed at low risk for harm to self or others. Aftercare plans included follow-up with the behavioral health service and pharmacological management. (GE 17.) There is no evidence that he engaged in aftercare treatment at that time other than medication management by his primary care doctor.

On January 13, 2014, Applicant sought treatment in a hospital's emergency department for depression and thoughts of suicide. He was discharged to follow up in the hospital's PHP, where he received treatment from January 16, 2014, to March 7, 2014, for his diagnosed bipolar disorder I, PTSD, and attention deficit disorder (ADD). He reported on admission to the PHP that he had been using marijuana for eight years, although not within the past ten days. His attendance in the program was sporadic, but he reported no use of marijuana while in the program. On his discharge, he was given a good prognosis provided he followed up with recommended counseling. (GE 15.)

On March 20, 2014, he began psychotherapy three times a week with a licensed clinical social worker (LCSW), who diagnosed him on Axis I with major depressive affective disorder – recurrent episode, moderate degree; PTSD; and alcohol dependence in remission. Applicant told the LCSW he was not using any marijuana and had abstained from alcohol for the last 25 years. (GE 14.)

Applicant had developed a close relationship with a girlfriend's grandson. After their relationship ended, his ex-girlfriend threatened to prevent him from seeing her grandson. Applicant reacted by attempting suicide, overdosing on his prescription Xanax and his insulin drug on April 1, 2014. (Tr. 52-53.) He was administered Narcan at the emergency room of a local hospital, where he became very agitated, tried to hit emergency room staff and hospital security, and threatened to kill one of the security officers. (GEs 3, 10, 13, 22.) He tested positive for benzodiazepine, amphetamines, cannabis, and opiates, and was admitted to the intensive care unit, where he continued to express threats toward his ex-girlfriend. He was diagnosed with multiple drug overdose, bipolar disorder, and ADHD, and transferred on April 3, 2014, to the hospital's inpatient psychiatric unit on an involuntary legal status (SOR ¶ 1.b). He had good behavioral control on the unit and explained that he overdosed as a test of his ex-girlfriend's love, i.e., would she obtain medical attention for him. On April 7, 2014, Applicant was discharged from the hospital with a diagnosis of bipolar disorder – recurrent, severe, mixed with psychosis, to follow up with his outpatient counseling and medication management. (GE 13.)

While Applicant was in the hospital, his ex-girlfriend served him with a restraining order. After his discharge, Applicant relapsed on alcohol and marijuana for a couple of

days because he was depressed. He started texting and leaving voice messages on his ex-girlfriend's cellular phone and drove by her house. On April 12, 2014, he was arrested for violating the protective order. (GEs 9, 12, 14, 22.) On April 15, 2014, Applicant was treated in a hospital emergency room after state police, in responding to a welfare check, found Applicant in an agitated and belligerent state. He had called his supervisor and expressed a threat of suicide. A urine screen was positive for cannabinoids. Applicant was discharged from the emergency room after declining treatment, but he continued his outpatient counseling with the LCSW. (GEs 14-15, 22.)

On May 2, 2014, Applicant had an argument with his current spouse (then fourth ex-wife) over Applicant's ex-girlfriend taking "his grandson" from him. Applicant's spouse told the police Applicant had pulled her hair, but he had not assaulted her. A witness stated that Applicant had pinned his spouse to the ground. Applicant was arrested and charged with disorderly conduct (SOR ¶ 2.j). (GEs 11-12, 22.) On February 10, 2015, the disorderly conduct charge was *nolle prossed*. Applicant pled guilty to violating a condition of his release for violating the protective order obtained by his ex-girlfriend, and he was sentenced to one year in jail (execution suspended), and two years of probation. (GE 12.) He was also required to attend 26 weeks of anger management classes, which he began in June 2015. (GE 18.)

An arrest warrant was issued for Applicant for breach of peace because of his combative and threatening behavior in the hospital emergency room on April 1, 2014 (SOR ¶ 2.h). Applicant turned himself in to the police when he learned of the warrant on May 8, 2014. He was found guilty and sentenced to six months in jail, execution suspended, and placed on probation for two years. (GEs 10-12.)

The incidents of April and May 2014 occurred despite counseling and medication management. (GEs 14, 22.) On July 3, 2014, Applicant entered a PHP where he was treated for bipolar disorder and suicidal ideation. He expressed on admission that he had some auditory hallucinations. His anti-depressant medication was adjusted with positive effect, and he was "stepped down" to the hospital's intensive outpatient program on July 21, 2014. He was discharged on August 6, 2014, to aftercare counseling with his therapist three times per week, and medication management by his physician. Applicant was clinically stable, and his prognosis was assessed as good as he was able to recognize his triggers and his unhealthy behaviors. (GE 15.)

Applicant resumed his psychotherapy sessions with the LCSW on August 8, 2014. His mood remained stable for the most part, although he was tearful over the loss of his relationship with his ex-girlfriend's grandson. As of November 26, 2014, he was using marijuana occasionally as a sleep aid against the clinical advice of his therapist. (GE 14.)

Applicant reported his recent psychiatric treatment and his psychotherapy with the LCSW on a Questionnaire for National Security Positions (SF 86) completed on February 13, 2015. He also indicated that he was on probation for two years for violating the conditions of his release and for breach of peace. He falsely responded "No" to whether he

had used any illegal drug in the last seven years. He admits that he lied on his SF 86. (GE 1; Tr. 70.)

As of March 2015, Applicant was attending psychotherapy sessions with the LCSW once a week. He had demonstrated increased insight and ability to make decisions in his best interest. Inconsistent compliance with his medications and distress over being denied a promotion at work led to an increase in his depression in July 2015, although his condition improved once he took his medications as prescribed. Applicant married his fifth wife in September 2015, but she left him in October 2015. Applicant's mental health deteriorated after the breakup, and he missed two weeks of work because of his mental state. He presented for a session with his treating LCSW in a decompensated state in late October 2015. At the LCSW's recommendation, Applicant was taken by his son to a local hospital. (GEs 14, 22.)

Applicant received treatment the hospital from October 26 – 27, 2015, for diagnosed bipolar disorder – most recent episode depressed; cannabis use disorder – moderate; and alcohol use disorder in full remission. He tested positive for amphetamines and cannabis, and admitted that he had used cannabis on 15 out of the last 30 days. He was transferred from the emergency room to a psychiatric unit, where he was discharged at his request, to obtain treatment elsewhere. He was advised to avoid alcohol and illegal drugs. (GEs 16, 22.)

On November 4, 2015, Applicant was assessed for treatment by a behavioral health service. He had experienced multiple losses over the previous two years, to include the suicide of a nephew. Applicant reported no current suicidal ideation, and no alcohol use for the past 25 years. He admitted that he had used marijuana on October 21, 2015, but none otherwise in the last 30 days. Applicant was diagnosed with bipolar I disorder – current or most recent episode depressed, severe; and with PTSD. On November 9, 2015, Applicant was admitted to a PHP five days per week. He was reminded of the risks of using alcohol or illegal drugs and the risk of combining alcohol or other substances with his prescription medications. He was an active participant in group therapy, and reported regular attendance at AA with no drinking. He was discharged in January 2016, having completed the PHP and an IOP, to follow up with his therapist. (GE 18.) The last available progress note of his treatment with the LCSW is dated February 23, 2016, although that progress note does not reflect that he was discharged. (GE 14.) Applicant recalls having sessions with the LCSW in 2017 and in 2018. (Tr. 55.) Of all his treatments, he considers his sessions with the LCSW to have been the most beneficial for him. (Tr. 66.)

Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) on February 22, 2016. He detailed his involvement with marijuana, including on four occasions since the spring of 2015. He admitted knowing that using marijuana was not allowed because of his security clearance. His recent drug involvement had been with his current wife's son, and he contributed funds to pay for the drug two or three times. Applicant added that he would never use marijuana at work. He expressed an intention to continue using marijuana on his personal time because it helps him to cope. He

claimed his co-workers, family, and friends know about his marijuana use and denied it could be a source of blackmail. (GE 22.)

On September 11, 2016, Applicant was arrested for felony unlawful restraint in the first degree following a domestic violence incident involving an ex-girlfriend. (GE 3.) His ex-girlfriend, who wanted to get drunk with him, bought a bottle of whiskey. After getting “very wasted” with her, he tried to choke her during an argument. (GE 4; Tr. 71-72.) The offense was in violation of his probation for the April 2014 protective order violation. On November 1, 2017, he was sentenced to three years in jail, execution suspended, and placed on probation for three years. (GE 9.) Applicant was also required to attend a six-month domestic violence program, which he completed. (Tr. 72-73.) He testified that his ex-girlfriend indicated that she would write a positive letter to the court to end his probation early in 2019. (Tr. 73.) He presented no record showing that his probation has been terminated.

At the request of the DOD, Applicant was evaluated by a licensed clinical psychologist on May 6, 2018. He reported to the psychologist that he had been attending anger management classes twice per week since January 2018. He explained that he had stopped his psychotherapy with the LCSW at the latter’s request. He claimed without any corroboration that the LCSW told him he was on the cusp of recovery and his coping skills were good, although he then admitted that he got bored with the therapy and had no plans to resume it. He was taking medications prescribed by his primary care physician, and he expressed an intention to continue taking them for his mental stability. Applicant described current symptoms of low esteem, sadness, attention and concentration issues, and missing his ex-girlfriend’s grandson. He reported a supportive relationship with his fourth ex-wife (spouse as of August 2019). He denied any episodes of mania since 2014. When discussing his past treatments, Applicant generally indicated that they were beneficial. Regarding substance abuse, he stated that he had been abstinent from alcohol from May 1989 to September 2016, when he relapsed for one day. He stated that he was not currently using any illegal drugs, and while he had used marijuana occasionally to help him calm down from approximately 2005 through 2014, he only used it with friends at parties. He acknowledged knowing that he was not supposed to use marijuana while holding a security clearance. Applicant also admitted that he was currently on probation after he choked an ex-girlfriend. (GE 4.)

During the evaluation, Applicant appeared guarded when discussing clinical issues; demonstrated loss associations; and needed repeated, direct, and specific questions to disclose information that did not portray him in a positive manner. He was not involved in any psychotherapy. In the opinion of the psychologist, Applicant’s judgment and reliability appeared poor, and his insight appeared fair. He diagnosed Applicant with bipolar I disorder – unspecified, ADHD – combined presentation; and borderline personality disorder. Applicant did not report any current PTSD symptoms or substance abuse, although the psychologist opined that Applicant likely met the criteria for a PTSD diagnosis as well. He found it concerning that Applicant had used marijuana while holding a clearance and indicated that he would be very concerned if Applicant resumed drinking. He assessed Applicant’s prognosis as guarded and opined that the bipolar I disorder and

borderline personality disorder are conditions that negatively impact Applicant's reliability, judgment, stability, and trustworthiness. If Applicant became noncompliant with his medications, it would have a significant negative impact on his reliability, stability, and judgment. The psychologist considered Applicant's disengagement from his psychotherapy to be ill-advised. Applicant's longtime employment since 1990, his dedication to his job, and the fact that Applicant felt much better than in the past, were favorable issues warranting consideration in the opinion of the psychologist. (GE 4.)

Applicant testified that he obtained a medical marijuana card in January 2017. (Tr. 64.) He denies any use of marijuana since his last use sometime during the spring of 2019. (Tr. 67.) He explained that he had used marijuana in the past when he "was in total breakdown." (Tr. 63-64, 67-68.) He admitted that he lied on his February 2015 SF 86 form by denying that he used any illegal drug in the last seven years. (Tr. 70.) He knew that marijuana use was not allowed while he held a DOD clearance. (Tr. 67.) Applicant does not currently attend AA. He denies any current consumption of alcohol and any intention to drink in the future. (Tr. 73.) He realizes that drinking any alcohol will not help him because he loses control when he drinks. (Tr. 74.)

Applicant is grateful to the DOD for granting him the privilege of having a clearance, which has allowed him to continue his work over the years. He does not believe that he has worked on any classified projects. Some of his co-workers do not have security clearances. Applicant believes he has done his job well. He is passionate about his work and has had no trouble focusing on his work. (Tr. 46-49.) He continues to struggle on a daily basis with controlling his emotions. (Tr. 54.) He is currently prescribed Lamictal (for his bipolar disorder), Adderall, and a new anti-depressant. He does not always take the Adderall because it impairs his ability to sleep, and he does not think the Lamictal is helping him. (Tr. 56-57.) He sought counseling for anxiety and depression through his EAP in late spring 2019, and he was referred to a local psychiatric hospital where they wanted to admit him to an inpatient substance abuse treatment program. He was using marijuana at that time, although he denies he was drinking alcohol. He did not pursue treatment because he did not want to take more time away from his work. (Tr. 58-59.) Applicant testified that he is "holding it together," and learning to not allow his emotions to get the better of his judgment. (Tr. 59-60.)

Applicant's current spouse has known Applicant for over 25 years. She testified that he has stopped drinking; that they have no alcohol in their house; and that they do not go to bars or to alcohol stores. She has not seen him with any alcohol since September 2016. (Tr. 76-78.) She is aware that he obtained a medical marijuana card in 2017 and that he last used marijuana in the spring of 2019 when "he was having an episode." (Tr. 81-82.) To her knowledge, Applicant "only uses it when he has an issue." She does not know how Applicant obtained the marijuana that he used earlier this year. (Tr. 82.) In all the years that she has known him, Applicant has not talked about his work with her. (Tr. 83-84.)

Applicant's supervisor from 2004 to August 2015 attests that Applicant demonstrated a high level of proficiency working on very complex products. This former supervisor never witnessed Applicant intoxicated or impaired at their workplace. Applicant

always put full effort into his duties and cared about his work. The supervisor knows of “no professional reason” why Applicant should lose his security clearance. (AE A.)

A co-worker of Applicant’s for the last 15 years, who has become a close friend, indicated that he understands the concerns, but he trusts Applicant with his life. In his experience, Applicant has been committed to providing a quality product for the U.S. military. As a friend, Applicant has been reliable, consistent, and trustworthy. (AE B.)

Applicant’s supervisor since 2014 has known Applicant since 2001. They graduated from apprenticeship school together and worked on the same crew on and off. This supervisor indicated that he has not witnessed or suspected Applicant of coming to work under the influence of any substance. He vouched for Applicant’s integrity as a trusted employee and patriot. Applicant continues to be a “valuable and necessary asset to [his] crew.” (AE C.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I: Psychological Conditions

The security concerns about psychological conditions are articulated in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by, or acceptable and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

Applicant has a history of mental health issues since 1989, when he was evaluated by a military clinical psychologist for suicidal ideation. He exhibited a depressed mood, although he was found fit for duty. In February 2005, he appeared to be suicidal following an incident with an ex-girlfriend, and he was psychiatrically hospitalized for four days for diagnosed bipolar disorder. In January 2012, Applicant began taking psychiatric medications prescribed by his primary care physician. In October 2012, Applicant voluntarily sought treatment from a behavioral health service, complaining of anxiety and depression. He was diagnosed with bipolar disorder and referred for inpatient psychiatric treatment. On admission to a psychiatric hospital's PHP in November 2012, he reported experiencing suicidal ideation daily. He was treated in the PHP for four days and then 12 days in its IOP for bipolar I disorder – severe, PTSD, and ADHD. He used marijuana against medical advice while in the IOP. Applicant continued to take prescribed psychiatric medications by his primary care physician, but did not follow through with aftercare counseling at that time.

Experiencing depression and thoughts of suicide, Applicant received treatment in a PHP from January 16, 2014, to March 7, 2014, for diagnosed bipolar I disorder, PTSD, and ADD. At discharge, Applicant began a therapeutic relationship with a LCSW for diagnosed major depressive affective disorder (recurrent) and PTSD. He attempted suicide by overdose on April 1, 2014, and was hospitalized for six days. He used alcohol and marijuana after discharge because he was depressed, and expressed threats against his

ex-girlfriend. Following legal incidents involving an ex-girlfriend and current spouse, he returned to the PHP on July 3, 2014, reporting auditory hallucinations. He was discharged from the facility's IOP on August 6, 2014, to continue his counseling with the LCSW. He benefitted from his psychotherapy with her, although as of November 2014, he was using marijuana as a sleep aid against the LCSW's clinical advice. The break up of a short-lived fifth marriage led to a decompensation of his mental health in October 2015.

Applicant received treatment in a PHP from November 9, 2015, to January 2016. He reportedly continued in therapy with the LCSW to sometime in early 2018. He was no longer seeing the therapist as of his evaluation by a licensed clinical psychologist for the DOD in May 2018. The clinical psychologist diagnosed Applicant with bipolar I disorder, ADHD, and borderline personality disorder, and opined that Applicant's bipolar I disorder and his borderline personality disorder are conditions that negatively impact his reliability, judgment, and trustworthiness. He gave Applicant a guarded prognosis, in part because Applicant had discontinued the psychotherapy that had proved beneficial.

Applicant continues to take medication prescribed by his primary care doctor for his mental health conditions. In the spring of 2019, he sought counseling through his EAP, and was referred to a local psychiatric hospital. He declined to follow its recommendation that he enter its substance abuse treatment program, although he was experiencing anxiety and depression and using marijuana at the time. He reportedly did not want to miss work.

No negative inferences are raised solely on the basis of mental health treatment. However, security concerns are raised under Guideline I when the conditions for which a person has had treatment can impair judgment, reliability, or trustworthiness with regard to handling or safeguarding classified information. Applicant's mental health issues have been a factor in several criminal incidents. The evidence establishes four disqualifying conditions under AG ¶ 28:

- (a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behavior;
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;
- (c) voluntary or involuntary hospitalization; and
- (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Applicant has the burden of establishing one or more of the following mitigating conditions under AG ¶ 29:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

None of the mitigating conditions fully apply. Regarding AG ¶ 29, Applicant has not always been compliant with treatment advice, as reflected by his marijuana use against his therapist's advice. He also failed to follow up with aftercare recommendations on occasion. Applicant's May 2018 diagnosed bipolar I disorder and borderline personality disorder are conditions that, in the opinion of a duly-qualified licensed clinical psychologist, negatively impact Applicant's reliability, judgment, stability, and trustworthiness. That assessment is borne out by Applicant's history of struggles to cope with his mental health issues despite several psychiatric hospitalizations and outpatient programs. Noting that Applicant appeared to be adhering to his medication regimen, the clinical psychologist who evaluated him for the DOD indicated that noncompliance with his medications would have a significant negative impact on his judgment, stability, and reliability. He gave Applicant a guarded prognosis, in part because of his "ill-advised" decision to disengage from psychotherapy. Applicant claimed that the LCSW ended their therapeutic relationship because he had good coping skills and was "on the cusp of recovery," but when asked to explain, he stated that he got bored with it. Applicant struggled with anxiety and depression in the spring of 2019. He sought assistance through his EAP at work and was referred to a psychiatric hospital, where he declined a recommendation to enter a substance abuse treatment program. Applicant testified that his currently prescribed Lamictal for his bipolar disorder "doesn't seem to do anything," and that he was placed on a new anti-depressant in early summer 2019. It is unclear why his medication was changed.

Applicant is credited with seeking treatment when he was experiencing an exacerbation of his mental health conditions, but his repeated hospitalizations are some

indication of the difficulty managing his mental health issues. He has yet to demonstrate that his mental health issues have a low probability of recurrence or exacerbation. The psychological conditions are not fully mitigated.

Guideline J: Criminal Conduct

The security concerns about criminal conduct are articulated in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's mental health issues and alcohol abuse have led to adverse involvement with law enforcement on several occasions. Applicant's lengthy history of criminal conduct triggers the following disqualifying conditions under AG ¶ 31:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;
- (c) individual is currently on parole or probation; and
- (d) violation of revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Two mitigating conditions under AG ¶ 32 have some applicability because three years have passed since Applicant's last offense. They are as follows

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

By all accounts, Applicant has a good employment record during his 29 years with a defense contractor. Applicant's co-workers who authored character references for him include his current and former supervisors. They credibly attest to Applicant's commitment to his duties as a senior designer. Despite his mental health struggles and substance

abuse, he managed to perform his duties with quality. Any adverse impact has been with regard to missing work during episodes of “breakdown” or while obtaining treatment. It is difficult to conclude that the criminal conduct is not likely to recur under AG ¶ 28(a) or that he is fully rehabilitated under AG ¶ 28(d). He remains on probation until November 2020 for unlawful restraint of an ex-girlfriend in September 2016, and concerns persist about his mental health and marijuana use. The criminal conduct security concerns are not sufficiently mitigated.

Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are articulated in AG ¶ 24:

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

Applicant used marijuana while holding a security clearance on several occasions between approximately July 2005 and the spring of 2019. He was diagnosed with cannabis abuse in December 2012 and cannabis abuse disorder in late October 2015. He tested positive for cannabinoids in several drug screens over the years, and he used marijuana against clinical advice. Although he had been reminded in November 2015 of the risk of combining substances, including illegal drugs, with his psychiatric medications, Applicant expressed during his February 22, 2016 subject interview that he intended to continue using marijuana on his personal time because it helps him cope with his mental health issues.

When evaluated by the clinical psychologist for the DOD in May 2018, Applicant denied any current marijuana use, although he admitted that he had used marijuana occasionally to relieve anxiety from “2005 to 2014” at parties, despite knowing that it was contrary to his security clearance obligations. It is unclear how many times Applicant used marijuana after he obtained a medical marijuana card in January 2017. He admits that he used marijuana in spring 2019, and that he had used marijuana in the past when he “was in total breakdown.” At the referral of his EAP, he was evaluated in late spring 2019 at a psychiatric hospital and advised to enter its substance abuse treatment program, which he declined. Applicant’s drug involvement triggers four disqualifying conditions under AG ¶ 25, as follows:

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

- (b) testing positive for an illegal drug;
- (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; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Regarding AG ¶ 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” Applicant admitted contributing funds to purchase some of the marijuana he used on a few occasions. It is not clear how he obtained the marijuana that he used after he obtained a medical marijuana card in January 2017. AG ¶ 25(c) has some applicability in that he had possession of marijuana while using it, but the evidence of purchase is limited.

AG ¶ 26 provides for mitigation of drug involvement and substance misuse security concerns, as follows:

- (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 an individual’s current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges his or 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 illegal 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 continued to use marijuana to as recently as the spring of 2019, despite clinical advice to abstain in part because of the risk of combining it with his psychiatric medications. His involvement with marijuana is too recurrent and recent for mitigation under AG ¶ 26(a). Regarding AG ¶ 26(b), Applicant now denies any intention to use marijuana in the future, and his current spouse testified that, to her knowledge, he has not used any marijuana since the spring of 2019. The evidence shows that Applicant repeatedly turned to marijuana as a sleep aid and to alleviate anxiety and depression, knowing that it was contrary to his obligations as a clearance holder. As recently as February 2016, he reported an intention to continue to use marijuana on his personal time. His use of marijuana since January 2017 was legal in his state, assuming he obtained the drug legally, but state laws permitting medical marijuana do not alter the federal prohibition or existing national security guidelines concerning marijuana use. Given his history of marijuana use, a longer period of abstention is required to ensure against recurrence. The drug involvement and substance misuse security concerns are not adequately mitigated.

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is articulated 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.

Applicant has a record of alcohol-related criminal offenses starting in June 1981. His drinking was a factor in his first divorce. His drinking doubled after he enlisted in the U.S. military in September 1988. At the request of his command, he was evaluated in May 1989, found to be alcohol dependent, and directed to attend Level III inpatient treatment, which he completed in August 1989. He reportedly was abstinent from alcohol for 25 years before relapsing on alcohol and marijuana in April 2014. He drank for a couple of days because he was depressed over his ex-girlfriend's decision to prohibit him from seeing her grandson. There is no evidence that he consumed alcohol thereafter until September 2016, when he "got very wasted" on vodka with an ex-girlfriend, whom he claims wanted to get drunk with him. He attempted to choke her on that occasion. Applicant's history of maladaptive use of alcohol triggers the following disqualifying conditions 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;

(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

(f) alcohol consumption, which is not in accord with treatment recommendations, after a diagnosis of alcohol use disorder.

Under ¶ E3.1.15 of the Directive, Applicant has the burden to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. AG ¶ 23 provides for mitigation of his maladaptive use of alcohol under the following conditions:

(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 good 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.

Since completing alcohol rehabilitation treatment for diagnosed alcohol dependence in 1989, Applicant has had two short-lived relapses in April 2014 and September 2016. He otherwise maintained abstinence over the last 30 years, even while struggling with serious mental health issues. His diagnosed alcohol use disorder was noted to be in full remission when he presented for treatment in October 2015. While being treated in a PHP in November 2015, he reported regular attendance at AA with no drinking. Regarding his more recent mental health and substance abuse issues that led him to consult with the EAP and led to a referral to a substance abuse treatment program earlier this year, there is no evidence that alcohol was involved. Applicant's spouse has known Applicant for more than 25 years, remaining friendly after their divorce in approximately 2006. She testified that she has not observed Applicant to drink any alcohol since September 2016. Applicant's use of alcohol to intoxication with an ex-girlfriend on that occasion appears to be an isolated incident of extremely poor judgment rather than an indication of ongoing struggles with alcohol. Applicant is not currently attending AA, but he is well aware of the trouble alcohol has cost him, and he does not intend to consume alcohol in the future. AG ¶¶ 23(a), 23(b), and 23(d) have some applicability in this case. Applicant had established a

lengthy pattern of abstinence after his Level III alcohol treatment in 1989, and he has been able to abstain since September 2016. Although his serious relapse of September 2016 is not condoned, he is not likely to repeat that behavior. The alcohol consumption security concerns are mitigated.

Guideline E: Personal Conduct

The concerns about personal conduct are articulated 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.

Regarding the Government's case under Guideline E because of Applicant's mental health issues, criminal conduct, drug involvement, and excessive alcohol consumption, the Appeal Board has held that security-related conduct can be considered under more than one guideline, and in an appropriate case, be given independent weight under each. See ISCR Case No. 11-06672 (App. Bd. Jul. 2, 2012). To the extent that the security concerns persist or are mitigated, my findings under the respective guidelines I, J, H, and G generally apply to the evaluation of his judgment, reliability, and trustworthiness under Guideline E. That being said, further comment is warranted in some aspects.

Concerning the mental health concerns, no negative inference is drawn about Applicant's judgment from the fact that he has some mental health issues or has been treated on an inpatient basis for his conditions. No one chooses to suffer from mental health problems, and treatment is viewed favorably. However, Applicant exhibited questionable judgment with regard to coping with his psychological conditions at times, including not pursuing aftercare counseling in 2013, which could well have led to the deterioration of his mental state exhibited by his suicide attempt and combative behavior in the emergency room in April 2014. Applicant also exhibited extremely poor judgment by using marijuana against clinical advice and knowing that it was contrary to his obligations of his security clearance. He exercised poor judgment in drinking to significant impairment in September 2016 just because his ex-girlfriend wanted to get drunk with him. The evidence supports a whole-person assessment of questionable judgment, and with respect to his marijuana use, unwillingness to comply with rules and regulations, as contemplated within disqualifying conditions ¶¶ 16(c) and 16(d), even though neither AG expressly applies because the conduct is explicitly covered under other guidelines and would be sufficient by itself for an adverse determination. AG ¶¶ 16(c) and 16(d) provide:

(c) credible adverse information in several adjudicative 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; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . .

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations

The evidence falls short of substantiating the SOR allegation (SOR ¶ 5.b) that Applicant deliberately falsified his December 2005 security clearance application by falsely responding “No” to an inquiry concerning whether he had illegally used any drugs or controlled substances in the last seven years or since the age of 16. During his February 22, 2016 interview, Applicant gave a date of July 2005 for his first experience with marijuana. When he answered the SOR, Applicant denied that he falsified his December 2005 SF 86, explaining that he had not used marijuana. At his hearing, he expressed uncertainty about the date of his first use of marijuana and explained that he thought his marijuana use occurred after he completed his SF 86. Applicant could have been mistaken in February 2016 about when he first used marijuana.

Applicant admits that he lied on his February 2015 SF 86 when he responded “No” to an inquiry concerning whether he had illegally used any drugs or controlled substances in the last seven years. The evidence clearly shows that he used marijuana within the scope of the inquiry. Disqualifying condition AG ¶ 16(a) applies. It provides:

(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.

Moreover, Applicant’s marijuana use contrary to his obligations as a clearance holder could adversely affect his professional standing, if not his defense contractor employment. His concealment of his drug use triggers AG ¶ 16(e), which provides:

(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.

Under AG ¶ 17, the following mitigating conditions could apply in whole or in part to alleviate the concerns about Applicant's personal conduct:

(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.

Applicant disclosed details of his marijuana use during his February 2016 interview. There is no indication that the OPM investigator knew about his drug use and had to confront him about it. Applicant was candid about his marijuana use at his September 2019 hearing, volunteering that he had used it as recently as the spring of 2019, and moreover, that he had declined to pursue recommended treatment for substance abuse at that time. Even so, his effort to correct the record was not sufficiently prompt for mitigation under AG ¶ 17(a). Regarding AG ¶ 17(c), the falsification of his SF 86 is not considered minor. It casts doubt on the reliability of his representations and reflects an unacceptable tendency to put his self-interest ahead of his obligation to tell the truth. Although his SF 86 falsification appears to have been isolated to that form, it cannot be viewed in isolation from other personal conduct of significant security concern. Regarding AG ¶ 17(d), Applicant has acknowledged his poor judgment. His efforts to obtain treatment for his mental health issues and alcohol problem indicate some rehabilitation. With the exceptions noted under Guideline G, he has maintained abstinence from alcohol for the past 30 years. Yet, despite some considerable efforts toward alleviating the stressors or factors that led to his inappropriate behaviors, he continues to struggle with his mental health issues, as evidenced by his consult with his employer's EAP in spring 2019. He turned to marijuana to alleviate his anxiety and depression, knowing that it was a violation of his security clearance requirements. He remains on probation for his September 2016 unlawful restraint of an ex-girlfriend. He lacks persuasive evidence toward establishing that the behavior is unlikely to recur.

As for mitigation under AG ¶ 17(e) of the vulnerability concerns raised by Applicant's concealment of his marijuana use, Applicant told the OPM investigator in February 2016 that his co-workers, family, and friends know about his drug involvement. Applicant presented three statements from co-workers that are silent on the issue of Applicant's marijuana. It is unclear what they know about Applicant's substances abuse, including whether they are aware that he used marijuana in 2019. Applicant has only partially mitigated concerns of vulnerability by informing the DOD about his drug involvement. The personal conduct security concerns are not fully mitigated.

Whole-Person Concept

In the whole-person evaluation, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

My comments under guidelines I, J, H, G, and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment. Applicant's work is clearly very important to him. He has managed to be a productive, valuable employee for several years while dealing with serious mental health issues that have been a factor in his substance abuse and criminal conduct. Three of Applicant's co-workers, including his former and present supervisors, attest to Applicant's concern with ensuring quality work for their U.S. military customer. They have not observed him to be impaired on the job. Applicant testified that his work is not classified. Even so, I cannot ignore the security concerns in several adjudicative areas that raise doubts about his judgment, trustworthiness, and reliability. Applicant knew that he is not allowed to use marijuana while holding a security clearance, and the concerns raised in that regard are not lessened because he used marijuana when he "was absolutely just losing [his] mind."

There is no evidence that Applicant would intentionally jeopardize the security of the United States or his job. Applicant's longevity with his defense contractor employer is an important consideration in his favor. However, the Government need not wait until a person mishandles or fails to properly safeguard classified information before it can deny or revoke access to classified information. *Adams v. Laird*, 420 F.2d 230, 238-39 (D.C. Cir. 1969), *cert. denied*, 397 U.S. 1039 (1970). All that is required is proof of facts and circumstances that indicate a particular applicant is at risk for mishandling classified information, or does not demonstrate the high degree of judgment, reliability, and trustworthiness required of

persons granted access to classified information. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980) (noting a high degree of trust must be reposed in federal employee with access to classified information); *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960) (noting security requirements include consideration of person's honesty, judgment, and sense of obligations), *aff'd*, 367 U.S. 886 (1961). For the reasons discussed above, I am unable to conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility at this time.

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 I:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.k:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraphs 3.a-3.c:	Against Applicant
Paragraph 4, Guideline G:	FOR APPLICANT
Subparagraphs 4.a-4.c:	For Applicant
Paragraph 5, Guideline E:	AGAINST APPLICANT
Subparagraph 5.a:	Against Applicant
Subparagraph 5.b:	For Applicant
Subparagraph 5.c:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge