DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 19-01662
	)	
Applicant for Security Clearance	)	

Appearances

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

03/31/2020

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has mental health issues that are largely controllable with treatment. He continues to consume alcohol regularly to intoxication. He used marijuana from 2002 to 2016, and prescription stimulants illegally 2002 to 2005, January 2007 to January 2008, and in July 2018. Psychological conditions security concerns are mitigated, but drug involvement and substance misuse and alcohol consumption security concerns persist. Clearance eligibility is denied.

Statement of the Case

On October 21, 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 H (drug involvement and substance misuse), and Guideline G (alcohol consumption). 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 December 9, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 24, 2020, Department Counsel indicated that the Government was ready to proceed to a hearing. On February 5, 2020, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On February 10, 2020, I scheduled a hearing for March 3, 2020.

The hearing was held as scheduled. Seven Government exhibits (GEs 1-7) and one Applicant exhibit (AE A) were admitted in evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on March 11, 2020.

Summary of SOR Allegations and Answer

The SOR alleges under Guideline I that Applicant was hospitalized for a manic episode in 2003 (SOR ¶ 1.a), and that he was diagnosed with bipolar disorder in 2004 (SOR ¶ 1.b); with major depressive disorder (moderate), bipolar I disorder, social anxiety disorder, generalized anxiety disorder, alcohol use disorder (moderate), and cannabis use disorder (severe) in remission in March 2016 (SOR ¶ 1.c); and with bipolar I disorder, social anxiety disorder, and alcohol use disorder in October 2018 (SOR ¶ 1.d). Under Guideline H, Applicant is alleged to have used and purchased marijuana with varying frequency from about 2002 through at least 2016 (SOR ¶ 2.a) and to have used Adderall without a prescription from 2004 through at least 2018 (SOR ¶ 2.b). Under Guideline G, Applicant is alleged to have been pulled over while driving in 2009 and to have failed a field sobriety test (SOR ¶ 3.a), and to continue to consume alcohol to intoxication despite a diagnosis of alcohol use disorder (SOR ¶ 3.b).

Applicant admitted the allegations in response to the SOR, but asserted that he had only experienced a single manic episode, takes medication to prevent future episodes, and regularly and consistently sees a medical provider for his conditions, which are under control with treatment. Applicant indicated that any use of marijuana since 2006 has been "rare and isolated." While he had a problem abusing marijuana during his youth, he received treatment and considers it fully in the past. He explained that he used Adderall as a study aid in college and his recreational use was limited to an isolated incident in 2018. He denied any intent to repeat that behavior. As for the alcohol consumption security concerns, Applicant stated that he learned his lesson from the failed field sobriety test in 2009 and does not operate a motor vehicle while intoxicated. He explained his alcohol use as follows:

> I use alcohol to mitigate the symptoms of Depression and Anxiety. I fully acknowledge that this behavior is unhealthy and disordered. I'm receiving

treatment through the form of talk therapy and am working to modify my consumption accordingly.

Findings of Fact

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

Applicant is 34 years old, has never married, and has no children. He earned his bachelor's degree in mathematics in September 2010, and his master's degree in computational science, engineering, and mathematics in August 2012. He took some courses online from January 2014 to January 2017, and earned a graduate certificate. He has worked for the same defense contractor since August 2012, after interning for the company in the summer of 2011, and he is currently a senior research associate. Applicant indicated on a July 2014 security clearance application that he was granted an interim secret-level clearance in July 2014, although he has not worked on any classified projects. (GEs 1-2, AE A; Tr. 24.)

Psychological Conditions

Applicant first sought mental health treatment in 2000, when he was 13 years old. He was struggling with depression, had low self-esteem, and lacked motivation. He was prescribed a mood-stabilizer medication at that time because of his family history of bipolar disorder, and he has been voluntarily receiving outpatient psychiatric treatment and counseling since then. (GEs 3-4.)

At age 17, in December 2003, Applicant had a manic episode after he ran out of his Lamictal medication while on a family vacation. Over the course of two weeks, he became extremely talkative with rapid speech, grandiose ideas, insomnia, and held a delusional belief. His mother took him to an emergency room, and he was admitted to a hospital for two weeks in January 2004 and treated for diagnosed depression. (GE 4; Tr. 25.) On his discharge from the inpatient psychiatric treatment, Applicant was prescribed Lithium, and he resumed his mental health treatment under the care of a psychiatrist and psychologist for diagnosed bipolar I disorder. (GE 4; Tr. 26-27.)

Clinical notes from his then treating psychiatrist in August 2010 indicate that Applicant's bipolar I symptoms were under good control on the antidepressants Zoloft and Sertraline, and the mood-stabilizers Lamictal and Lamotrigine. During a psychiatric evaluation at the university health services for a transfer of providers when he moved for graduate school in September 2010, Applicant related that he was consuming alcohol three nights a week, three to four drinks per occasion, and six drinks on the weekend days. He stated he was not using any illegal drugs. He reported feeling "definitely depressed," and worrying excessively. Applicant reported some improvement in functioning over the previous two years. He was diagnosed with bipolar I disorder, most recent episode depressed, moderate. Applicant was started on Abilify medication, and he began weekly therapy with a psychologist in the community while continuing to meet with a psychiatrist at

the university's health services department. Applicant continued to struggle with depression, with some exacerbation of symptoms around academic examinations. (GE 4.)

During a session with his university health services' psychiatrist on March 2, 2011, Applicant reported a significant improvement in mood since his previous session in December 2010. He was taking Lamictal and Zoloft medication with good effect, experiencing no mood swings, and continuing in therapy with a psychologist in the community. During his next session, which occurred in May 2011, Applicant reported no mania or severe depression, although he had downward turns of mood lasting several hours or days and moderate generalized anxiety. He had a pattern of relying on alcohol to medicate for his anxiety. He was advised to obtain care from a psychiatrist in the local community. (GE 4.)

In September 2011, Applicant had a final session at university health services. He advised that he had not found a new psychiatrist and was running low on his medications. He was given a 14-day supply of Zoloft and contact information for some local psychiatrists. His mental health was assessed as fairly stable. (GE 4.) The psychologist who treated Applicant on a regular basis from September 2010 to December 2011 for diagnosed bipolar disorder indicates that their sessions focused primarily on managing Applicant's depression and related issues. Applicant exhibited no serious problems with judgment or impulse control, and no serious behavioral or psychiatric issues. (GE 5.)

After earning his master's degree in August 2012, Applicant began working for his current employer. (GE 1.) Life stress led Applicant to retreat into a very depressive episode in late 2013. He missed approximately one month of work because of his depression and checked himself into a three-week partial hospitalization program. The treatment consisted primarily of talk therapy, medication adjustments as needed, and support to regain his stability after the depressive episode. (GEs 2-3; Tr. 29-30.)

Over the years, Applicant's medication dosages have been adjusted to address his mental health issues. He continues to experience depression and intense anxiety, but he has not had any symptoms of mania since 2003. (Tr. 25-26.) He currently takes Lamotrigine (a mood-stabilizer), Lexapro, Ativan, and Wellbutrin for his mental health issues. (Tr. 27-28.) He sees his psychiatrist once every two months for medication management and his psychologist every two weeks for counseling. (GEs 6-7; Tr. 29.)

Applicant began a therapeutic relationship with his current psychiatrist in April 2013 (GE 6) and with his psychologist in March 2015. (GEs 2, 7.) Applicant's psychiatrist diagnosed him with bipolar I disorder (single manic episode, most recent episode depressed); social anxiety disorder; and generalized anxiety disorder. Between April 2013 and March 2016, Applicant experienced four episodes of depression but no hypomania or mania. Applicant took his medications as prescribed and had extended psychotherapy. (GE 6.) During his intake with his current psychologist, Applicant presented with episodic depression and problems with social anxiety. The psychologist diagnosed him with major depressive disorder, moderate, recurrent, and with social anxiety disorder. As of March 2016, Applicant had attended 41 sessions with his psychologist. He was actively committed

to working on ways to manage his symptoms and keep them from interfering with his life. His treating psychologist indicated that Applicant was particularly responsive to cognitive-behavioral interventions to decrease problematic thoughts, and he made considerable progress in the area of being more active in pursuing social interactions and confronting his anxieties. His mood was stable and bright for several months as of March 2016. (GE 7.)

On October 6, 2018, Applicant underwent a psychological evaluation by a clinical psychologist at the request of the DOD CAF. Applicant reported that he continues to experience approximately four depressive episodes of varying intensity per year. He reported experiencing symptoms of anxiety, especially in social settings, although he exhibited no observable signs of anxiety. He expressed an understanding of the seriousness of his condition and of the importance of taking his psychiatric medications as prescribed. The psychologist assessed Applicant's judgment as good and his insight as intact. Clinical testing revealed no marked elevations indicative of psychopathology, but some potential problems with regard to his anxiety, albeit still within the normal range. The psychologist noted that Applicant's single manic episode at age 17 could have been triggered by the anti-depressant medication he was taking at the time, and she gave him a good prognosis as to the risk of another manic episode. Depression was more prominent, but the psychologist noted that his depressive symptoms had not negatively interfered with his work environment since 2014. Applicant showed that he is able to identify triggers for a depressive episode (i.e., that they are more likely to occur in the winter, after the dissolution of a romantic relationship, or when he is overwhelmed at work), but this insight was considered to be a strength in that it allows him to be proactive in utilizing his coping skills, and taking measures to minimize the impact of his symptoms. The clinical psychologist assessed his prognosis for future depressive episodes as poor in that they are likely to occur throughout his life, but the chronicity of his depression has a fairly predicable pattern that makes his condition "quite stable." Applicant's ongoing anxiety could exacerbate or serve as a trigger for his depressive episodes, although it could serve as "a protective factor when it comes to judgment and impulsivity." The clinical psychologist concluded about his mental health conditions as follows:

> [Applicant] does have chronic mental health conditions, including Bipolar I Disorder and Social Anxiety Disorder, that are being appropriately managed and treated, and they are currently stable. Even when symptomatic, it is not believed that these conditions pose any significant risks to his judgment, reliability, or trustworthiness concerning classified information. Additionally, the risk to judgment and reliability of any future mental health problems is low.

Drug Involvement and Substance Misuse

Applicant used marijuana regularly in high school, initially once or twice a month starting at age 16 in approximately 2002. After his hospitalization for his manic episode in 2003, Applicant began to consider ceasing his marijuana use. He understood that his marijuana use contributed to his lack of motivation and caused him intense anxiety. Yet, by age 18, he was using marijuana daily and sometimes multiple times per day. His marijuana

use was social with friends, and he used marijuana because his friends were using it. (GEs 2-3; Tr. 30-31.) Applicant reported to a psychiatrist in September 2010 that he was "consistently high" from smoking marijuana between the ages of 18 and 20 (between 2004 and 2006). (GE 4.)

Initially, Applicant used marijuana shared by his friends, occasionally contributing money for marijuana or splitting the cost of marijuana with others. By age 18, he was purchasing marijuana once or twice a week at a cost of $40 each time. Approximately once every couple of months, Applicant sold some of his marijuana to friends, but not for profit. (GE 2.)

Applicant decided to reduce his marijuana use because it made him feel paranoid and interfered with his productivity. He no longer purchased marijuana after 2005, but he continued to use marijuana once a year to once every couple of years to at least 2016. (GEs 2, 4; Tr. 31.) During a session with his then treating psychiatrist in late May 2011, Applicant reported that he was using marijuana rarely, less than once a month. (GE 4.) During his personal subject interview with an Office of Personnel Management (OPM) investigator on May 3, 2017, Applicant indicated that he used marijuana once every couple of years. (GE 2.) At his March 2020 hearing, he described his marijuana use since approximately 2005 as "once a year tops." (Tr. 32.)

On July 24, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86.) In response to an inquiry concerning any illegal drug use in the last seven years, Applicant responded that he used marijuana between September 2002 and November 2011, stating, "In high school I smoked marijuana recreationally with some periods of heavy use. In college, I used it on the rare occasion." Applicant responded "No" to whether he intended to use marijuana in the future and explained that he used the drug as a teenager and was no longer interested in using it. Applicant answered "No" to a question concerning any illegal drug purchase in the last seven years. He responded "Yes" to an inquiry into whether he had intentionally misused a prescription drug in the last seven years, and disclosed that he had used "Concerta" between January 2007 and January 2008 "as a stimulant for pulling all night study sessions in college." (GE 1.)

Applicant used marijuana after he completed his SF 86. He used marijuana while vacationing with college friends in June 2015, and another time in 2016. (GEs 2-3; Tr. 31-32.) About his use in June 2015, he told the OPM investigator in May 2017 that he wanted to confirm that he no longer liked the drug, and that after taking two hits of marijuana from a bowl, he felt uncomfortable and stoned. (GE 2.) Applicant held a "misguided notion" that his drug involvement would not be disqualifying because he was truthful about his marijuana use, did not have a serious addiction problem, and his use was restricted to "lighter substances such as marijuana or Adderall." (Tr. 35-36, 44.) Applicant states that he would not have used marijuana if he understood it was a problem for his security clearance eligibility. (Tr. 44.)

As of March 2016, Applicant was diagnosed by his treating psychiatrist with cannabis use disorder, severe, but in remission. (GE 6.) During his May 2017 subject interview, Applicant admitted that he has friends who currently use marijuana, and that his roommates use marijuana in their home, but not in his presence. He indicated that he made a personal choice to stop using marijuana, but when asked about his future intent, he expressed "a reasonable expectation" that he may smoke marijuana in the future, once every few years, depending on the situation. (GE 2.) During his psychological evaluation for the DOD in October 2018, Applicant admitted to the evaluating psychologist that he used marijuana as recently as 2016 and would be open to using marijuana again. He also stated that, although his friends use marijuana, he has been able to refrain from using it. (GE 3.) Applicant knew that marijuana use remains illegal under federal law, notwithstanding the state's decriminalization of recreational use of marijuana. (Tr. 46.)

At his hearing in March 2020, Applicant expressed a willingness to abstain from marijuana use if he is granted a clearance. (Tr. 34, 44.) He testified that he would "potentially" use marijuana in the future if he does not have a clearance. (Tr. 34.) Applicant lived with persons who used marijuana from September 2016 to September 2018. Within a few months of his March 2020 security clearance hearing, he was at a small social gathering with persons who smoked marijuana in his presence. He did not use any marijuana at that time because he had no desire to use it, as he "generally" does not enjoy it at this point in his life. (Tr. 45-46.) As to why then he would then consider the possibility of future marijuana use, especially given its illegality under federal law, Applicant testified:

> That's a legitimate question. Part of it is just out of curiosity, just to see if [it] still affects me in the way that it does right now, in the way that provokes just anxiety. (Tr. 46.)

Applicant used Adderall without a prescription about once every two to three months from 2002 to 2005. He obtained the drug from friends. (GE 2.) While he was in college, Applicant used Adderall or Concerta "a handful of times" from January 2007 to January 2008 as a study aid. The drugs were not prescribed for him. (GEs 1-2.) During his May 2017 subject interview with the OPM investigator, he denied any intention to misuse either Adderall or Concerta in the future. (GE 2.) Yet, he used Adderall recreationally at a party in July 2018 while socializing with some friends from college. The drug was given to him by a friend who had a prescription. (GE 3; Tr. 35.) Applicant did not think his substance misuse was a problem for his clearance eligibility because he did not have a serious drug problem and his use was of a "lighter substance." In hindsight, he would not have used it had he realized it posed a problem for his clearance eligibility. (Tr. 35-36.) Applicant knew that taking a drug not legally prescribed for him was against the law, but he did not think much of it because "[it] was in a controlled environment, private environment. And there was no potential of harm to [himself] or others at the time." (Tr. 53.)

The licensed clinical psychologist, who evaluated Applicant for the DOD in October 2018, expressed her belief that his marijuana use poses no significant risk to his judgment, reliability, or trustworthiness, given he had not used the drug with any regularity since 2005. His use of Adderall in July 2018 was "a moment of poor judgment, especially considering

his mental health conditions and the fact that he is in the process of undergoing a security clearance determination. The psychologist opined that Applicant's drug use did not meet a clinical level of pathology, and that more often than not, Applicant is able to make good decisions. However, she deferred to the adjudicators as to whether his recent misuse of a stimulant in July 2018 is relevant to his security worthiness. (GE 3.)

Alcohol Consumption

Applicant drank alcohol a few times in high school, but he did not enjoy it. After two years at a community college, he transferred to a four-year university in January 2007. He was pulled over in 2009 and failed a field sobriety test, but he was not charged with an alcohol offense. (GE 3.) While at the university, Applicant began drinking six or more beers on the weekends at bars to be social. In September 2010, he started graduate school. He socialized with others who drank alcohol, and over the next two years, his drinking increased to five to seven days per week, three to four beers on weeknights and five to six beers on the weekends. As of March 2011, Applicant reported drinking alcohol two days during the work week, up to three drinks per day, and six drinks on both weekend nights. (GE 4.) In February 2011, Applicant had been advised by his psychologist that his drinking was likely exacerbating his depression. Applicant was reportedly mildly defensive with his psychologist about his drinking, and expressed that it was the only really bright spot in his week in that alcohol helped him feel less anxious. Despite being advised of the risk that alcohol posed for his bipolar disorder, Applicant did not plan to quit drinking, although he told his psychologist he would consider reducing his weekday consumption. (GE 5.) In late May 2011, Applicant admitted to his then treating psychiatrist that he was consuming seven to eight drinks on Friday and Saturday nights regularly to get drunk, and three to four drinks two other nights of the week. (GE 4.)

In October 2011, Applicant acknowledged to his mental health providers that he was drinking too much. He was drinking daily up to five beers at a sitting during the week and more on the weekends. Applicant expressed no interest in ceasing his alcohol use. (GE 5.)

In March 2016, Applicant's current psychiatrist diagnosed Applicant with alcohol use disorder, moderate. Applicant regularly engaged in binge drinking (in excess of six drinks in an evening) since he began treatment with the psychiatrist in 2013. (GE 6.) However, the psychiatrist told the DOD-contracted clinical psychologist in October 2018 that Applicant has shown an ability to control his alcohol use, as demonstrated by periods of voluntary sobriety for a couple of months at a time, and that he had never recommended to Applicant that he refrain from all alcohol use. Given Applicant uses alcohol to alleviate his anxiety in social situations, his treatment with his psychiatrist has focused on strengthening other coping skills. (GE 3.)

The clinical psychologist, who evaluated Applicant for the DOD in October 2018, indicated that Applicant's use of alcohol is of concern because it exceeds general medical recommendations for the use of alcohol per the National Institute of Health's guidelines, and he may be self-medicating his anxiety with alcohol instead of relying on psychological or pharmacological methods. She diagnosed Applicant with alcohol use disorder, mild, but

expressed her opinion that Applicant's alcohol use did not present an acute security concern because the amount Applicant consumes is "mediated by age-normative social experiences in which alcohol is commonly seen as a social lubricant;" his alcohol use has not impaired his work; and it is not contrary to his treating psychiatrist's recommendations. The psychologist found that Applicant did not minimize his alcohol use and concluded that his use of alcohol did not rise to the point of impaired judgment. (GE 3.)

Applicant testified that his treating psychiatrist has recommended that he consume less alcohol. (Tr. 41.) About 90% of Applicant's drinking has been social, but he also drinks alcohol to relieve symptoms of anxiety and depression. Since at least May 2017, Applicant has played trivia at a bar on Tuesday nights with friends. (GE 2.) As of October 2018, Applicant reported that he was drinking alcohol (usually beer) five to seven days per week, in quantities of three to five beers on weeknights and six beers at a sitting on the weekends. He had hangovers a few times per month. He expressed his belief that he drinks too much, but it helps him to feel more confident and less anxious. (GE 3; Tr. 41.) As of March 2020, Applicant was playing "bar trivia" and billiards at a bar. He started doing trivia as an undergraduate in college and has been playing in a pool league for about a year. (GE 2; Tr. 37-38, 47-48.) He had a "dry January" in 2020 where he abstained from alcohol for one month. He had no intention to maintain abstinence from alcohol and resumed drinking (usually beer) in his previous pattern of two or three drinks almost every night and five to six drinks on the weekends over a course of about five hours while socializing with friends, frequently at his apartment. (Tr. 50-52.) As of March 2020, Applicant was drinking to intoxication "not each night of the week, but more so than not probably." (Tr. 39-40.) Applicant now believes his alcohol use is having a negative health effect in terms of long-term disadvantages should he continue to use alcohol to alleviate symptoms of depression and anxiety. (Tr. 41-42.) He has been trying to reduce his consumption for years, but the motivation to change is "not super strong." (Tr. 49.) He considers his alcohol use a "personal concern" that does not impact his professionalism or ability to handle classified information. (Tr. 44.)

Work Reference

Applicant enjoys his job. He has missed work at times due to his depression, but his supervisor is supportive. (GE 3.) Applicant has had the same supervisor since August 2012. Applicant's supervisor described Applicant as "a dependable and dedicated coworker with keen insights, great analytic skills, and a terrific knack for working in a team." Applicant is willing to assist his coworkers, and is a mentor to junior staff. He has good time management skills, is diligent about his work, and takes project objectives seriously, often working beyond regular hours to meet tight deadlines. Applicant always represents their employer well when interacting with clients. His supervisor expressed complete confidence in Applicant and his character.

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 been receiving pharmacological treatment and psychotherapy since he was 13 years old, initially for depressive symptoms. After he had a manic episode with a delusional belief at age 17, he was psychiatrically hospitalized for two weeks in January 2004 and given a diagnosis of bipolar I disorder. In April 2013, he began a therapeutic relationship with his current psychiatrist. Applicant experienced four episodes of depression but no mania between April 2013 and March 2016, when his treating psychiatrist diagnosed him with bipolar I disorder (single manic episode), social anxiety disorder, and generalized anxiety disorder. While working for his current employer, Applicant experienced a depressive episode in late 2013 that caused him to miss work. He underwent voluntary treatment for three weeks in a partial hospitalization program. In March 2015, Applicant began counseling with his current therapist, a psychologist, for diagnosed major depressive disorder (moderate, recurrent), and social anxiety disorder. In October 2018, he was diagnosed with bipolar I disorder and social anxiety disorder by a duly-qualified clinical psychologist, who evaluated him for the DOD. Applicant reported that he continues to experience approximately four depressive episodes of varying intensity per year, and has current symptoms of anxiety. The psychologist gave Applicant a good prognosis as to the risk of another manic episode but a poor prognosis for future depressive episodes due to the chronicity of his condition.

Three disqualifying conditions under AG ¶ 28 are established, as follows:

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

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

(c) voluntary or involuntary inpatient hospitalization.

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.

Applicant's bipolar I disorder is a chronic condition primarily characterized by depressive symptoms, although he did have a manic episode with delusional thought in late 2003. A duly-qualified psychologist for the DOD indicated that he is likely to suffer from depressive episodes in the future, but she also indicated that his condition is "quite stable." Applicant has shown that he is able to recognize the triggers for his mental conditions and seek treatment when necessary. AGs ¶ 29(a), 29(b), and 29(c) have some applicability in that his conditions appear to be controllable with treatment. His anxiety disorder is an ongoing issue for him, and the clinical psychologist indicated that it could serve as a trigger for depressive episodes. However, she also concluded that the risk to his judgment and reliability is low. While exacerbations of his mental health conditions cannot completely be ruled out, Applicant has a long history of taking his medications as prescribed under the care of a psychiatrist and participating in counseling with a psychologist. The psychological conditions security concerns are mitigated.

Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are set forth 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 illegally used marijuana on a regular basis from 2002 through 2005. His use increased to where he used the drug daily, and sometimes multiple times daily, from 2004 through 2005. He continued to use marijuana at a significantly reduced frequency, once a year or once every couple of years, until his most recent use in 2016. Applicant purchased marijuana in 2004 and 2005, once or twice a week at a cost of $40 each time. Applicant used Adderall or Concerta, which were not prescribed for him, once every two to three months from 2002 to 2005. He used the stimulants again "a handful of times" from January 2007 to January 2008 as a study aid in college. In July 2018, while socializing with some college friends, Applicant used Adderall recreationally at a party. Disqualifying condition AG ¶ 25(a), "any substance misuse," applies because of his illegal use of marijuana and prescription stimulants. AG 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," applies because of his purchases of marijuana. AG ¶ 25(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;" warrants some consideration because Applicant was diagnosed by his treating psychiatrist with cannabis use disorder, severe, but in remission, in March 2016.

With regard to Applicant's future intentions, AG ¶ 25(g), "expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse," is established. Applicant denied any future intention of marijuana use when he completed his SF 86 in July 2014. However, during his May 2017 personal subject interview, Applicant expressed that he may use marijuana in the future, once very few years, depending on the situation. During his October 2018 psychological evaluation for the DOD, Applicant indicated that he would be open to using marijuana again. At his March 2020 hearing, Applicant expressed a willingness to abstain from marijuana in the future if he is granted security clearance eligibility, while admitting that he would "potentially" use marijuana in the future if he is not granted a clearance.

Applicant bears the burden of establishing that matters in mitigation apply. AG ¶ 26 provides for mitigation 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.

None of the mitigating conditions apply. Regarding AG ¶ 26(a), Applicant's use of marijuana has been infrequent, once a year or once every couple of years, since 2005 or 2006. His last use of marijuana was three or four years ago, depending on when he used it in 2016. Even so, he used marijuana one time each in 2015 and 2016 after he completed his SF 86 for security clearance eligibility. He used Adderall without a prescription as recently as July 2018. Applicant no longer lives with anyone who uses marijuana, but he continues to socialize with friends who use marijuana. Only a few months before his March 2020 hearing, he was at a small social gathering with persons who smoked marijuana in his presence. There is no evidence that Applicant used marijuana on that occasion, and he explained that he had no desire to use it. Applicant now maintains that he would not have used marijuana in June 2015 and 2016 or Adderall in July 2018 had he realized that his involvement would have presented a problem for his security clearance eligibility. At his March 2020 hearing, he expressed a willingness to abstain from marijuana, but it was conditioned on a favorable adjudication of his clearance eligibility. Applicant continues to entertain the possibility of future marijuana use depending on the situation. Moreover, he raised considerable doubts about any commitment to abstain by using marijuana after he indicated that he had no intention to use marijuana in the future. The drug involvement and substance misuse security concerns are not 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.

While in college, Applicant began drinking six or more beers on the weekends at bars to be social. He failed a field sobriety test in 2009 when he was pulled over, although he was not charged with any offense and his blood alcohol level on that occasion is not in evidence. Applicant's drinking increased while he was in graduate school from September 2010 to August 2012. He was told by his then treating psychologist in February 2011 that alcohol was exacerbating his depression. Yet, by May 2011, Applicant was consuming seven to eight drinks on Friday and Saturday nights, regularly to get drunk, and three to

four drinks two other nights of the week. In March 2016, Applicant was diagnosed by his psychiatrist with alcohol use disorder, moderate. His psychiatrist advised him to reduce his alcohol consumption, but Applicant continued to drink in pretty much the same pattern as he had in graduate school. In October 2018, Applicant reported drinking primarily beer five to seven days per week, in quantities of three to five beers on the weeknights, and six beers per sitting on the weekends. The psychologist who evaluated him for the DOD diagnosed him with alcohol use disorder-mild. As of March 2020, Applicant was consuming two or three alcoholic drinks almost every night and five to six drinks on the weekend days. While about 90% of Applicant's alcohol consumption has occurred while socializing with others, he was also using alcohol to self-medicate for anxiety. He was drinking to intoxication, not every night but "more so than not probably."

The following disqualifying conditions under AG ¶ 22 are applicable to a greater or lesser extent:

> (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 accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant failed a field sobriety test in 2009. It is the type of behavior contemplated within AG ¶ 22(a). However, evidence of intoxication on that occasion is limited, and there is no evidence of any other incident of driving while impaired. Regarding AG ¶ 22(c), "binge consumption of alcohol" is not defined in the AGs or the Directive. The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume five or more drinks, and when women consume four or more drinks, in about two hours. *See* https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm. Applicant testified that he drinks six beers over the course of five hours, which may not qualify as binge drinking, if he spaces out the drinks. That being said, he admitted that he drinks to intoxication more often than not. An individual whose faculties are habitually impaired by alcohol does not exhibit the sound judgment and responsible behavior required of a person entrusted with or seeking access to classified information. The protection of classified information is a 24-hour-per-day responsibility and extends to off-duty hours. The clinical psychologist for the DOD indicated in her October 2018 evaluation report that

Applicant's alcohol use "exceeds medical recommendations for use of alcohol, per NIH/NIAAA guidelines."

Applicant was diagnosed with alcohol use disorder by his treating psychiatrist in March 2016 and by the clinical psychologist, who evaluated him for the DOD in October 2018, so AG ¶ 22(d) applies. The evidence to establish AG ¶ 22(f) is less clear. Applicant's treating psychiatrist recommended to Applicant that he reduce his alcohol consumption, although the psychiatrist has not recommended to Applicant that he completely abstain from alcohol use. Given Applicant uses alcohol to alleviate his anxiety in social situations, his treatment with his psychiatrist has focused on strengthening other coping skills. His alcohol consumption was not shown to be currently against treatment recommendations for his mental health issues.

One or more of the following mitigating conditions under AG ¶ 23 may apply in whole or in part:

> (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances 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.

AG ¶ 23(a) cannot reasonably apply because Applicant drinks with some regularity to intoxication as of March 2020. Concerning AG ¶ 23(b), Applicant currently believes he is drinking too much, but he lacks the motivation to appreciably change his drinking habits. He has not had treatment specifically targeting his alcohol use, so neither AG ¶ 23(c) nor AG ¶ 23(d) are fully established. To the contrary, it appears that Applicant's psychiatrist, while recommending that Applicant reduce his alcohol consumption, has to some extent accepted the role that alcohol plays in minimizing the symptoms of Applicant's anxiety disorder, and he has not recommended any substance abuse treatment for Applicant, despite the fact that he has diagnosed Applicant with alcohol use disorder, moderate.

In assessing whether Applicant's longtime pattern of consuming alcohol five to seven days per week, in quantities of three to five beers per sitting during the work week and six beers a sitting on the weekend days, presents an unacceptable security risk, I cannot ignore the assessments of duly-qualified mental health practitioners because of their qualifications and experience. Applicant's treating psychiatrist indicated in March 2016 that Applicant adheres responsibly to the treatment plan, but the psychiatrist did not address Applicant's alcohol consumption specifically. The clinical psychologist who evaluated Applicant for the DOD opined in October 2018, in part:

> [Applicant's] alcohol use is of concern. His use exceeds general medical recommendations for use of alcohol, per NIH/NIAAA guidelines. Further, both [Applicant] and his treating psychiatrist noted that one purpose of his use of alcohol was to reduce his social anxiety; this raises concerns that he could be self-medicating his condition instead of relying upon more orthodox psychological or pharmacological methods of reducing his anxiety. Despite these concerns, it is my opinion that [Applicant's] alcohol use is not an acute security concern as there are other factors that mitigate the pathology of his use. That is, the amount of alcohol [Applicant] consumes appears in part mediated by age-normative social experiences in which alcohol is commonly seen as a social lubricant and in which activities often surround alcohol consumption, such as bar-hopping. It should be noted that his alcohol use has never impaired his ability to work as he has remained a reliable employee for the past 3-4 years. Further, [Applicant's] use of alcohol is not contrary to his medical practitioner's recommendations and his treating practitioner, who is apparently aware of his alcohol use pattern, has not recommended he seek any additional substance use treatment. [Applicant] has maintained good candor in reporting the amount of alcohol he uses, even when he has expressed a concern that, at times, he drinks too much. In other words, he did not appear to self-censor or minimize his use of alcohol as others may have done in this circumstance. Therefore, it is difficult to conclude that his use of alcohol rises to the point of impaired judgment. (GE 3.)

The clinical psychologist clearly had some concern about Applicant's alcohol consumption, especially his use of the substance to self-medicate his anxiety symptoms. However, she did not consider those concerns to be acute largely because there was no evidence of impaired judgment at his workplace related to alcohol; his drinking is largely social and typical of his age and circumstances; and he appears to be in control of his drinking. At the same time, she diagnosed Applicant with alcohol use disorder-mild, which indicates that he met two of eleven diagnostic criteria for clinical pathology of an alcohol use problem within the Diagnostic and Statistical Manual of Mental Disorders-5th edition (DSM-5). Notwithstanding the psychologist's clinical opinion, I am concerned that Applicant's habitual consumption of alcohol to intoxication presents a risk to his ability to handle classified information. The alcohol consumption security concerns are not 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), as follows:

> (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.

Applicant has been a diligent, productive, and reliable worker for his employer since August 2012, despite missing some work to address his chronic mental health conditions. Applicant's supervisor has complete confidence in him and has no hesitation about attesting to his good character. It is unclear if Applicant's supervisor knows that Applicant used marijuana and non-prescribed Adderall while undergoing evaluation for security clearance eligibility; that Applicant drinks to intoxication on a regular basis; and that he is not presently motivated to change his drinking habits or willing to commit unequivocally to no marijuana use in the future.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. *See*, *e.g.*, ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons noted, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant 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:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant

Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant

Conclusion

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

_____
Elizabeth M. Matchinski
Administrative Judge