



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



In the matter of:)
)
) ISCR Case No. 20-01442
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq. Department Counsel
For Applicant: *Pro se*

05/19/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has a long history of serious alcohol issues and related criminal conduct, dating back to his time in college, even when he was underage. The security concerns over his conduct are ongoing and unmitigated. He did not provide sufficient information to mitigate the alleged security concerns under Guideline J, criminal conduct, or Guideline G, alcohol involvement, or Guideline E, personal conduct. Security concerns under Guideline I, psychological conditions, are not established. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 25, 2017. On September 21, 2020, the Defense Counterintelligence and Security Agency (DSCA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guidelines, J, G, E, and I. The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent

Directive 4, *National Security Adjudicative Guidelines* (AG) implemented by the DOD on June 8, 2017.

It is unclear from the file when Applicant received the SOR, or when he responded to it. In his undated Answer, Applicant elected to have his case decided by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On December 10, 2020, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 8. The file indicates that the FORM was mailed to Applicant on December 14, 2020, and that he received it on December 22, 2020. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, nor, by definition, did he submit additional evidence for the record. The case was assigned to me on March 19, 2021.

Government's Evidence

The SOR and the Answer (Items 1 and 2) are the pleadings in the case. In his Answer, Applicant admitted all the allegations without further explanation. Item 3 is his September 2017 SCA. Item 7 is his FBI Identification Record, detailing his criminal offenses. Items 3 and 7 are admitted without further comment.

Item 4

The documents in Item 4 are unauthenticated summaries of Applicant's "personal subject interviews" (PSIs), conducted in March, April, and May 2018, by an agent of the U.S. Office of Personnel Management (OPM) as part of Applicant's background investigation. Item 4 is the basis for SOR ¶ 4.a, which Applicant admitted. Item 4 was not authenticated by Applicant, as required under ¶ E3.1.20 of Enclosure 3 of the Directive. The CAF could have requested that Applicant authenticate Item 4 when it sent him interrogatories on other subjects (Items 5 and 6) but did not do so.

Item 4 was included with the Government's FORM, and Applicant was informed in the body of the FORM that he could comment on the PSIs, make corrections, additions, deletions, and updates to make the summaries clear and accurate. He could also object to admission of Item 4 on the grounds that it was unauthenticated. Applicant was also advised that "if no objections are raised in your response to the FORM, or if you do not respond to the FORM, the administrative judge may determine that you have waived any objections to the admissibility of the summary and may consider it as evidence in your case." (FORM, page 2)

Applicant did not respond to the FORM, and therefore did not avail himself of the opportunity to object to Item 4. It is therefore admitted.

Items 5 and 6:

In March 2019, the DOD CAF (a predecessor to the DSCA CAF) issued Applicant an interrogatory, seeking information about his current and prior alcohol involvement (Alcohol Use Interrogatory) and about his history of alcohol evaluation, treatment, and counseling, including a request for appropriate records of such counseling or treatment from the providers. (Drug/Alcohol Evaluation/Treatment Interrogatory). Item 5 is a document comprised of materials received by the DOD CAF in response. The response to the “Alcohol Use” Interrogatory contains relevant information on that subject, presumably provided by Applicant – though there is no signature page from him. (Item 5 at 1-8) The response to the “Alcohol Evaluation/Treatment/Counseling” Interrogatory includes records from a counseling center, relating to Applicant, though, again, there is no signature page from him. (Item 5 at 9-23)

In September 2019, the DOD CAF sent Applicant another interrogatory, requesting that he obtain an individual psychological evaluation. Applicant did so, and Item 6 (unlike Item 5) includes a signature page, from Applicant, signed in October 2019. (Item 6 at 1-4). Curiously, Item 6 also includes the psychological report itself, though it is dated months later, on February 28, 2020. (Item 6 at 5-9)

Applicant did not respond to the FORM, and therefore did not avail himself of the opportunity to object to Items 5 or 6. They are therefore admitted.

Item 8

Item 8 is a document submitted in response to an inquiry from OPM, prepared by an employee in the registrar’s office at the university Applicant attended. Item 8 details information reported by the employee based on a review of Applicant’s disciplinary record. The records from which the information was obtained are not included.

Applicant did not respond to the FORM, and therefore did not avail himself of the opportunity to object to Item 6. It is therefore admitted.

Findings of Fact

Applicant admitted all allegations in the SOR without explanation. He did not address the paragraphs (¶¶ 2.e, 2.i, 2.m, 2.o, and 4.b) that cross-alleged conduct alleged under other guidelines, but since the underlying allegations were admitted, I consider the cross-allegations admitted as well. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant was born in October 1990. He is 30 years old. He has never married and he has no children. He graduated from high school in spring 2008. He started college that fall and earned a bachelor’s degree in 2014. He has worked for his current employer and clearance sponsor, a large defense contractor, since April 2017. During

most of the time since he graduated from college, Applicant worked for other contractors at the same location, with some gaps in employment when contracts ended. (Item 3)

Guidelines J & G:

During Applicant's time in college, he incurred multiple infractions, allegedly for alcohol-related conduct, resulting in discipline from university authorities. He also incurred multiple alcohol-related arrests both during and after his time in college.

The first infraction was in October 2008, after Applicant and his college roommate were allegedly playing a drinking game in their dorm room. Applicant explained in his background interview that they had been playing the game with water, and not with beer. Nevertheless, he was ordered to participate in an alcohol-awareness class, which he did. (Item 4 at 2-3) The university registrar's office recorded an infraction for possession of "alcohol paraphernalia" for which Applicant was found "responsible," and that he completed an "educational paper" as a sanction. (Item 8) (SOR ¶ 2.b)

On three additional occasions over the next two years (March 2009, September 2010, and November 2010), Applicant engaged in drinking in his dorm room. (Item 4 at 3) These instances violated university policy prohibiting underage drinking. He was ultimately placed on disciplinary probation and removed from student housing. (Item 8) (SOR ¶¶ 2.c, 2.d, and 2.f)

In September 2010, also while underage, Applicant was driving home after a night out drinking with friends when he was pulled over for speeding. He was given a breathalyzer and registered a 0.07 blood alcohol content (BAC). He was arrested and charged with a misdemeanor offense of having an unlawful blood alcohol level (under 21) of 0.05 or higher, while operating a motor vehicle. He pleaded no contest in December 2010, and he was ordered to attend alcohol counseling and a DUI program. His driver's license was also suspended for a month. (Item 3 at 39-40; Item 4 at 6)(SOR ¶¶ 1.a, 2.e)

Applicant reported on his SCA that he attended alcohol counseling, with Ms. W, from January to April 2011, and noted that it was court ordered. (Item 4 at 46) In his PSI, he generally referenced his counseling with Ms. W, and noted that she had advised him to abstain from alcohol. (Item 4 at 7) SOR ¶ 2.g, which Applicant admitted, also alleges that he was diagnosed at the time with alcohol abuse. Notwithstanding the admission, there is no documented record evidence of either the diagnosis or the treatment in 2011.

On or about September 8, 2012, Applicant was arrested and charged with driving under the influence (DUI) with a 0.14 BAC. He reported in his PSI that he and his girlfriend had a disagreement in a campus parking lot because they had to move the car to another lot, and Applicant had been drinking and did not want to drive. (Item 4 at 3) University police came to the scene and detained him before turning him over to county

police. He spent the night in jail. (Item 4 at 10) Applicant went to court in March 2013, and entered a no contest plea to the DUI charge. He was convicted, ordered to attend alcohol treatment, a DUI program, and a victim-impact panel, and his driver's license was suspended for a year. (Item 3 at 41-42; Item 4 at 10; Item 5 at 8; Item 7)(SOR ¶¶ 1.b, 2.i)

In addition to the criminal sanctions resulting from this event, Applicant was also found responsible by university authorities for violating university policy regarding individuals under the age of 21 concerning possession and/or consumption of alcohol, among other university policy violations regarding student conduct. University records, as reviewed by an employee of the registrar's office, indicate that he received disciplinary probation, participated in a counseling assessment, and completed court sanctions. (Item 8 at 2) (SOR ¶ 2.h)

SOR ¶ 2.j, which is also based on review of university records, alleges that on or about September 17, 2012, Applicant was found responsible, sanctioned, and suspended for non-compliance with an official request, complicity in violating the student code of conduct, disruptive conduct, and hazing. (Item 8) SOR ¶ 2.j also alleges that Applicant "had consumed alcohol prior to this offense." This "offense" is not detailed anywhere in the record, even in Applicant's PSI, unless it is already covered in SOR ¶ 2.i. (Item 4 at 3) Notwithstanding Applicant's admission to SOR ¶ 2.j, it is unclear what "conduct" or "offense" is addressed in the allegation, and the details of the sanctions are undocumented.

Applicant reported on his SCA that he attended additional court-ordered alcohol counseling with Ms. W from January to May 2013. (Item 45-46). This was part of his sentence for the September 2012 DUI offense discussed above. (SOR ¶¶ 1.b, 2.i) In his PSI, Applicant generally referenced his counseling with Ms. W, and noted that she had advised him to abstain from alcohol. (Item 4 at 7) SOR ¶ 2.k, which Applicant admitted, also alleges that he was diagnosed with alcohol abuse. Notwithstanding the admission, there is no documented record evidence of either the diagnosis or the treatment in 2013.

In September 2013, Applicant was again found responsible by university authorities for violation of university policy regarding guests and alcohol, and complicity in violating the student code of conduct. He was required to take a course and was reprimanded. (Item 8) Applicant reported in his PSI that this concerned a party in his dorm room that was broken up by the RA. (Item 4 at 3) (SOR ¶ 2.l) While Applicant admitted the allegation, there is no documentation in the record to detail the circumstances of this incident, alcohol-related or otherwise. There is nothing in the record to reflect that Applicant himself was drinking at the time.

In January 2014, Applicant was detained by university police after an argument with his girlfriend. He had been drinking. (Item 4 at 9) (SOR ¶¶ 1.c, 2.m) The record does not reflect that he was arrested as a result. He was again disciplined by the university for his disruptive conduct, and placed on probation. (Item 8 at 2)(SOR ¶ 2.n) Applicant graduated from the university in spring 2014.

In November 2016, Applicant was driving home when he fell asleep at a red light. He was awakened by police, and arrested for DUI after he refused a field sobriety test and a breathalyzer. (Item 4 at 6) In May 2017, Applicant pleaded no contest to the DUI charge and was convicted. He was sentenced to 10 days of confinement, ordered to attend a 16-week substance abuse program, a DUI program, and weekly Alcoholics Anonymous (AA) meetings. He received one year of probation, was required to install an ignition interlock device on his car, and his driver's license was revoked for five years. (Item 3 at 42-43; Item 6 at 6-7; Item 7)(SOR ¶¶ 1.d, 2.o)

After spending two days in jail, Applicant spent eight days in an inpatient alcohol facility in May 2017. His initial assessment by the counselor, Mr. S, was a diagnosis of severe alcohol use disorder. Applicant disclosed prior marijuana use that ended several years before, and drinking several times a week from age 18 until the time of his most recent DUI arrest, in November 2016. On discharge from the 16-week program (including outpatient treatment) in August 2017, Applicant was diagnosed with polysubstance use disorder, in early, partial remission. He was advised to maintain abstinence from drugs and alcohol. (Item 5 at 17-22) (SOR ¶ 2.p)

Guideline E

Applicant submitted his SCA in September 2017, and had his initial background interview (PSI) in March 2018. The summary of his PSI reflects that Applicant discussed his high school, community college, and undergraduate education. It also states that "after the Subject [Applicant] provided he had no disciplinary issues while at [his college, identified by name], the Subject was confronted" with his numerous disciplinary incidents, including those alleged at SOR ¶¶ 2.b, 2.c, 2.d, 2.h, 2.i, and 2.n. (Item 3 at 2-4) SOR ¶ 4.a alleged that Applicant falsified material facts when he stated to the OPM investigator that he had no disciplinary actions at his university, when in fact he did, and deliberately sought to conceal that information. Applicant admitted SOR ¶ 4.a without explanation.

In March 2019, the DOD CAF sent Applicant an interrogatory about his history of alcohol involvement. (Item 5) He reported drinking one to six beers, twice a week, on weekends, between November 2016 (his most recent DUI) and Christmas 2017. (Item 5 at 3-4) Applicant's acknowledged drinking up to at least Christmas 2017 was after he was advised to abstain from alcohol use as recently as August 2017, by Mr. S., in the substance abuse program. (SOR ¶ 2.q)

Guideline I

In January 2020, DOD CAF referred Applicant for a psychological evaluation. The evaluator, Dr. B, a Ph.D. licensed clinical psychologist and board-certified neuropsychologist, reviewed Applicant's 2017 counseling records and his 2018 report of investigation (ROI) from 2018, including his background interview summaries. The evaluation report reflects that Applicant reported his most recent use of alcohol was Christmas 2018, not Christmas 2017; he said he consumed five or six drinks at a time

which he also estimated as the “normal” amount of consumption for the average person. (Item 6 at 6-7)

In her report (Item 6 at 8), Dr. B diagnosed Applicant with alcohol use disorder, severe (provisional). (SOR ¶ 2.r) She concluded as follows:

While I cannot confirm a personality disorder in this case, it is worth of note that I identified this applicant as having an overly inflated sense of self-worth and lack of acceptance for his inappropriate illegal behaviors historically, which could be indicative of the very diagnosis of antisocial personality disorder indicated by his psychological testing. However, based on the medical records and history of this applicant, a diagnosis of alcohol use disorder, severe, is certainly likely. Though he reports not drinking for a little over a year, he has a recent history of giving varying information about his alcohol intake and his general lack of insight into the problematic behavior is concerning to me as a clinician. I have concerns regarding his risk of relapse. He is not in treatment, and has received treatment only when mandated by this [sic] courts and his inconsistent reporting of use leads me to believe he still may be abusing alcohol; however, at minimum it raises concerns about his candor and as such his reliability/judgment/trustworthiness. His insight is poor. (Item 6 at 8) (Emphasis added)

When Applicant answered the SOR, he admitted all the allegations without providing any explanation or comment. He also did not respond to the FORM. He therefore did not offer any evidence to mitigate any security concerns established by the Government.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” Under ¶ E3.1.14, the

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline G, Alcohol Consumption

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

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

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following disqualifying condition is applicable in this case:

(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 an 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, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed; and

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

Guideline J allegations ¶¶ 1.a, 1.b, 1.c, and 1.d are all cross-alleged under Guideline G (SOR ¶¶ 2.e, 2.i, 2.m, and 2.o, respectively). They are all established by the record evidence, and they all satisfy AG ¶ 22(a). (This includes SOR ¶ 1.c, which, as noted below, is not established as criminal conduct, since Applicant was not arrested).

In addition, Applicant's alcohol involvement while in college led to numerous disciplinary infractions. These allegations (SOR ¶¶ 2.b, 2.c, 2.d, 2.h, and 2.n) also satisfy AG ¶ 22(a). As noted above, it is not established that the infraction alleged at SOR ¶ 2.l was alcohol-related.

As discussed above, notwithstanding Applicant's admission to the allegation, SOR ¶ 2.j (concerning university discipline imposed on or about September 17, 2012) is either duplicative of SOR ¶ 1.i (concerning the events of September 8, 2012) or it is insufficiently detailed to establish that it concerned a second, separate event. No AGs apply to SOR ¶ 2.j.

SOR ¶¶ 2.g and 2.k, allege, in part, that Applicant was diagnosed with alcohol abuse, during court-ordered counseling with Ms. W., in 2011 and 2013, respectively. Notwithstanding the admission, there is no documented record evidence of such a diagnosis, in either 2011 or 2013. AG ¶ 22(d) does not apply to those allegations.

AG ¶ 22(d) applies to Applicant's diagnosis of severe alcohol abuse disorder, in his initial assessment by Mr. S, in May 2017, and to the diagnosis of polysubstance abuse, in early, partial remission, when Applicant was discharged from the treatment program, in August 2017.

In SOR ¶ 2.r, Dr. B.'s provisional diagnosis of severe alcohol disorder is alleged as a security concern under Guideline G, but the diagnosis was not confirmed. It is therefore not sufficient to apply AG ¶ 22(d).

Applicant was advised to abstain from alcohol on several occasions, including by Ms. W during her counseling (in either 2011, 2013, or both). More recently, he was advised to abstain from alcohol use (and illegal drug use) by Mr. S in 2017, in connection with the diagnosis of polysubstance abuse disorder in early, partial remission. Notwithstanding this diagnosis, Applicant's drinking continued to at least Christmas 2017, or even Christmas 2018, as found by Dr. B. AG ¶¶ 22(e) and 22(f) are therefore satisfied.

Applicant has a long history of problematic alcohol involvement, going back not only to when he was in college, but also when he was underage. He incurred numerous disciplinary infractions while in college, all related to alcohol consumption. He has incurred several alcohol-related arrests, both during and after college. All of these instances are examples of conduct stemming from impaired judgment. During Applicant's 2012 evaluation, he said his drinking pattern was to consume five or six drinks at a time, an amount he also estimated as the "normal" amount of consumption for the average person. (Item 6 at 6-7) Given Applicant's history of alcohol consumption

and its direct relation to his history of criminal conduct and disciplinary record, I find that Applicant therefore has a history of habitual or binge consumption of alcohol to the point of impaired judgment. AG ¶ 22(c) applies.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

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

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; 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.

Applicant has a long and troubled history of alcohol involvement. His drinking led to repeated disciplinary actions in college and he has several alcohol-related arrests. He has a diagnosis of severe alcohol use disorder in May 2017, and a polysubstance abuse disorder in early, partial remission. He was evaluated in 2020 and was found to have poor insight into his drinking, a lack of candor, and questionable judgment and reliability. Applicant has not fully acknowledged the extent of his problems with alcohol, or with the severity of the consequences of his actions. He is not currently in treatment or counseling for his alcohol issues.

Even if Applicant's assertions that he has consumed no alcohol since December 2017 were true (which the evaluator doubts), he offered no more recent evidence in mitigation. He did not provide any explanation or update about his abstinence or drinking habits, or his efforts to resolve them through counseling or treatment. He did not submit updated information sufficient to mitigate or overcome the security concerns about his history of alcohol involvement.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (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; and
- (c) individual is currently on parole or probation.

Applicant has a long history of alcohol-related criminal offenses, committed both when he was in college and afterwards. He incurred alcohol-related arrests in September 2010, September 2012, and in November 2016. AG ¶¶ 31(a) and 31(b) apply to those offenses (SOR ¶¶ 1.a, 1.b, and 1.d)

Notwithstanding Applicant's admission, SOR ¶ 1.c is not established as criminal conduct. He was detained by university police and was disciplined by the university, but there is no record evidence that he was arrested in January 2014. He acknowledged being under the influence of alcohol (a factor addressed under Guideline G, below), but he was of age, so criminal conduct is not established by that admission alone.

Applicant's most recent DUI (in November 2016) (SOR ¶ 1.d) led to a one-year probation term, as part of his sentence, issued in May 2017. That one-year term has now presumably expired. His driver's license was revoked for five years – until May 2022. That revocation has not expired – a fact to be addressed in mitigation, below. But the ongoing revocation of Applicant's driver's license does not itself satisfy AG ¶ 31(c).

The following mitigating conditions for criminal conduct are potentially applicable under AG ¶ 32:

- (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.

Applicant's long-term problems with alcohol have led to several arrests, both during and after college. His most recent such offense was in November 2016. While he

is no longer on probation for that offense, he is still dealing with the consequences of it, as his driver's license remains revoked until May 2022. His criminal conduct is repeated, of a similar nature, and is recent. His prior actions continue to cast doubt on his current judgment, trustworthiness, and reliability. He has not established that either mitigating condition AG ¶¶ 32(a) or 32(d) should apply. Applicant did not provide sufficient evidence to mitigate the criminal conduct security concerns.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

Applicant submitted his SCA in September 2017, and had his initial background interview in March 2018. The summary of that PSI reflects that Applicant discussed his high school, community college, and undergraduate education. It also states that "after the Subject [Applicant] provided he had no disciplinary issues while at [his college, identified by name], the Subject was confronted" with his numerous disciplinary incidents, including those alleged at SOR ¶¶ 2.b, 2.c, 2.d, 2.h, 2.i, and 2.n. (Item 3 at 2-4) SOR ¶ 4.a alleged that Applicant falsified material facts when he stated to the OPM investigator that he had no disciplinary actions at his university, when in fact he deliberately sought to conceal that information. Applicant admitted SOR ¶ 4.a without explanation. AG ¶ 16(b) is therefore established.

In SOR ¶ 4.b, the Government cross-alleged Applicant's alcohol-related conduct (SOR ¶¶ 2.a – 2.d, 2.f, 2.h, 2.j, 2.l, 2.n, and 2.q) as independent security concerns under Guideline E, personal conduct. (Curiously, neither Applicant's criminal conduct (SOR ¶ 1.a – 1.d nor the related cross-allegations under SOR ¶ 2) were cross-alleged under Guideline E). Applicant's numerous incidents of alcohol-related misconduct, leading to disciplinary actions by the university all satisfy the general personal conduct security concern of AG ¶ 15 (conduct involving questionable judgment and unwillingness to comply with rules and regulations). AG ¶ 16(c) also applies to the subparagraphs of SOR paragraph 2 (all noted above) that were cross-alleged in SOR ¶ 4.b.

The remaining subparagraph cross-alleged in SOR ¶ 4.b is SOR ¶ 3.a, which concerns the findings and conclusions from the January 2020 psychological evaluation. While the psychologist makes findings and conclusions about Applicant's personal conduct, I am unable to conclude that these findings and conclusions are properly alleged as a personal conduct security concern under Guideline E.

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

(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; and

(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.

As to SOR ¶ 4.b, AG ¶¶ 17(c) and 17(d) do not apply for the same reasons as set forth in the analysis of the mitigating conditions under Guidelines J and G, above. As to SOR ¶ 4.a, there is no evidence that Applicant attempted to correct his omissions before being confronted by the interviewing agent about his disciplinary history in college. The DOD evaluator also specifically cited Applicant's lack of candor about his alcohol use as an ongoing concern. AG ¶ 17(a) does not apply.

Guideline I, Psychological Conditions

The security concern for psychological conditions is set forth 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 to 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 28. The following are potentially applicable in this case:

(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.

The basis for a Guideline I case here is, potentially, twofold: 1) the diagnostic results of the psychological evaluation that constitute a Guideline I security concern under AG ¶ 28(b) and 2) any behavior issues appropriately classified as a security concern under AG ¶ 28(a).

The psychologist diagnosed Applicant with alcohol use disorder severe (provisional). As with Guideline G AG ¶ 22(d) above, a provisional diagnosis of an alcohol use disorder is not sufficient to establish application of AG ¶ 28(b) under Guideline I. Nor is an alcohol use disorder alleged in SOR ¶ 3.a, under Guideline I.

SOR ¶ 3.a alleges certain of the psychologist's findings about Applicant's impulsiveness, risk-taking, lack of candor, lack of insight and acceptance of responsibility for his illegal and inappropriate behavior that "may be indicative of a personality disorder." However, the psychologist does not conclude that Applicant has a personality disorder. AG ¶ 28(b) therefore does not apply.

As to AG ¶ 28(a), Applicant's security significant behavior unquestionably "casts doubt on [his] judgment, stability, reliability, or trustworthiness" and is also unquestionably "irresponsible." However, since several other guidelines are implicated (as discussed at length above), it cannot be said that Applicant's behavior is "not covered under any other guideline." (Emphasis added) Moreover, while the psychologist noted Applicant's "overly inflated sense of self-worth and lack of acceptance" of his inappropriate illegal behaviors, she pointedly began the conclusion of her report by noting that she "cannot confirm a personality disorder in this case." (Emphasis added). For all of those reasons, I cannot conclude that AG ¶ 28(a) applies. Since no Guideline I

disqualifying conditions are established, I need not address applicability of mitigating conditions.

Whole-Person Concept

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

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

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines J, G, I, and E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Applicant has yet to come to terms with the full extent of his alcohol issues – issues which underlie all other security concerns in this case. He needs to establish a significant, sustained track record of abstinence or sobriety, supported by appropriate counseling or treatment, and a favorable prognosis, as well as a track record of compliance with the law before he can be considered a suitable candidate for access to classified information. Applicant did not mitigate the alcohol involvement, criminal conduct, psychological conditions, or personal conduct security concerns. Eligibility for access to classified information is denied.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.d:	Against Applicant
Subparagraph 1.c:	For Applicant

Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a-2.i, 2.k, 2.m-2.q:	Against Applicant
Subparagraphs 2.j, 2.l, 2.r:	For Applicant
Paragraph 3, Guideline I:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4: Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a-4.b:	Against Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge