



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



In the matter of: )  
)  
) ISCR Case No. 19-02669  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: Ronald C. Sykstus, Esq.  
04/18/2022

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated security concerns raised by her psychological condition and past alcohol consumption. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

**History of the Case**

Applicant submitted a security clearance application (SCA) on May 11, 2016. On November 1, 2019, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline I (psychological conditions) and Guideline G (alcohol consumption). Applicant answered the SOR on November 22, 2019, and requested a hearing before an administrative judge. I was assigned to the case on June 3, 2020, but the hearing was delayed due to the COVID-19 pandemic. On March 5, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 30, 2021, and the hearing was held as scheduled via video teleconference on the Defense Collaborative System (DCS).

Government’s Exhibits (GE) 1 through 4 and Applicant’s Exhibits (AE) A through N were admitted without objection. I marked my March 4, 2021 prehearing scheduling order as Hearing Exhibit (HE I); Department Counsel’s February 14, 2020 discovery letter

as HE II; and Department Counsel's exhibit list as HE III. Applicant and eight character witnesses testified. Department Counsel requested that the record be left open to be allowed to submit the DOD CAF's 2018 psychology report referenced in the SOR. Applicant's counsel did not object, but noted the inherent unfairness caused by the Government's failure to include this document in its February 2020 discovery and its failure to produce this document in the intervening year prior to the hearing.

On March 30, 2021, after the hearing was completed, I received the DOD CAF's psychology report and labeled it GE 5. On March 31, 2021, Applicant's counsel objected to GE 5 based upon fairness and timeliness. I overruled his objection but reopened the record and set a follow-up hearing date of May 6, 2021. All parties met again via DCS as scheduled.

At the May 6, 2021 reconvened hearing, I marked the various emails, collectively, regarding GE 5 as HE IV. Applicant's original AE B was marked as HE V, and an updated version of AE B was admitted into the record without objection. Additionally, AE O, an updated letter from Applicant's psychiatrist, was admitted without objection, and Applicant testified. Applicant's counsel renewed his earlier objections to GE 5, and noted that the 2018 report did not incorporate or review the records contained in GE 3, despite Applicant's timely signing of a records release. Nor did GE 5 specifically state what records were considered by the DOD CAF psychologist. The DOD CAF report also referenced documents that were not offered into evidence by the Government at the hearing and referenced information that was not supported by the documents offered by the Government. I noted Applicant's counsel's objections, overruled them, admitted GE 5, and stated that the objections would go to the weight of the document.

I received the transcript (Tr.) of the March 30, 2021 hearing on April 16, 2021, and I received the transcript (Tr. 2) of the May 6, 2021 reconvened hearing on May 21, 2021, and the record closed.

### **Findings of Fact**

Applicant is almost 44 years old, divorced, and has no children. In December 2001, she received a Bachelor of Science in computer science, with a computer information system's option. In May 2006, she received a Master of Science in management information systems. Applicant has worked for her current employer, a Defense contractor, since April 2016. At the time of the hearing, Applicant was working as an information systems security officer. Prior to the revocation of her interim secret security clearance in November 2019, she supported her company's classified computer systems. This is her first security clearance application. (GE 1; GE 4; AE C; AE D; Tr. at 12-14, 26-28)

The SOR alleges that Applicant was evaluated in September 2018, by a licensed clinical psychologist and was subsequently diagnosed with bipolar I disorder, most recent episode with psychotic features; alcohol use disorder, severe; and unspecified anxiety disorder. Additionally, the SOR alleged that the psychologist determined that an absence

of any clear medical indication that Applicant's consumption of alcohol was in accordance with medical recommendations, it could adversely affect her judgment, reliability, and trustworthiness due to her psychological condition. The alcohol use disorder was cross-alleged under Guideline G. The SOR also alleged that when Applicant was discharged in April 2015 from an inpatient treatment program for her bipolar I disorder, she received a medical recommendation that she abstain from alcohol, yet she continued to consume alcohol. (SOR; GE 5)

Applicant admitted in her Answer to the SOR that her current diagnosis is bipolar I disorder, for which she receives regular treatment. However, she denied the alcohol use disorder, severe diagnosis, and stated that in 2015 she stopped taking the medication that was contraindicated with alcohol use. Additionally, she indicated that she has voluntarily abstained from alcohol since November 2019. (SOR; Answer; AE A; AE B)

From a young age, Applicant suffered from sporadic depression issues, and her drinking, in part, was the result of her depression and undiagnosed mental health conditions. She started drinking alcohol in high school at the age of 15 or 16. Her depression worsened while she was in college, and consequently, her alcohol consumption increased after she started college in 1996. (GE 4 at 4; GE 5; Tr. at 29, 44-45, 59-60; Tr. 2 at 20)

In 2000, while still in college, Applicant was "very depressed" and started "drinking heavily." She consumed alcohol three to four times a week to the point of intoxication. In September 2000, she was arrested and charged with driving under the influence of alcohol (DUI) after attending a party. Applicant pled guilty and paid the relevant fines. She was not court ordered to receive treatment, nor did she voluntarily seek treatment for her alcohol consumption at that time. (GE 4 at 3-4; GE 5; Tr. 37-39, 59-60; Tr. 2 at 20)

In July 2001, Applicant was arrested and charged with a second DUI. Following this arrest, she voluntarily attended alcohol-related treatment from August to September 2001. She received inpatient treatment for approximately 10 days and then outpatient treatment for two to three months. According to Applicant, the treatment she received was helpful, but she does not recall what her diagnosis was at that time. (Applicant attempted to obtain a copy of these treatment records, but they had been destroyed.) It was recommended that following her treatment, she discontinue consuming alcohol and continue attending Alcoholics Anonymous (AA) meetings. (AA meetings were part of her outpatient treatment.) She voluntarily attended AA meetings for approximately three years after the July 2001 DUI. She found that the AA meetings fell in line with her personal faith, and they were very helpful overall in her life. (GE 4 at 4; GE 5; Tr. at 38-42, 61-62; Tr. 2 at 21, 23)

Applicant was unaware of how significant her depression or mental health issues were until approximately 2004, when she was diagnosed with bipolar disorder (unspecified) by her then primary care physician. He also treated her older sister, who had previously been diagnosed with bipolar disorder. It was stressed to Applicant that she take her medication regularly; however, after her initial diagnosis, she freely admits that

she was inconsistent with taking her medications for about a year. She later realized that she needed her medication and was mostly compliant for approximately ten years, until about 2014. (Tr. at 29, 40, 43-46, 61)

In approximately 2004, when Applicant resumed consuming alcohol, she disclosed to her primary care physician that she was drinking again in moderation. He asked her to watch her levels of alcohol consumption, but he never told her not to drink or gave her instructions as to how much she should or should not drink. She testified that she resumed consuming alcohol, because she believed she had dealt with her underlying mental-health issues and did not consider herself to be an alcoholic, alcohol dependent, nor have an alcohol-related condition. She also described her drinking as responsible, due to having matured. Between 2004, when Applicant resumed consuming alcohol, and 2019, when she discontinued consuming alcohol, as further discussed below, she had no alcohol-related incidents. (GE 4; Tr. at 42-43, 46-47, 62-66; Tr. 2 at 24)

In August 2011, Applicant sought treatment from her primary care physician, due to a crying spell. (She received treatment from him from 2009 to 2015.) He referred her to a local hospital where she received three days of inpatient treatment for a bipolar episode. She could provide no additional details regarding the circumstances of this incident. (GE 4; Tr. at 64, 66-68)

In April 2015, Applicant noticed her medications were no longer working, as she was hearing voices and having paranoid and suicidal ideations. She went to her parents' home for support and later contacted her primary care physician. She was ultimately referred to an inpatient facility for five days of treatment. At that time, she was experiencing a manic episode and was diagnosed with bipolar I disorder, recurrent, severe depression with psychotic features, and anxiety disorder, not otherwise specified. Following this diagnosis and treatment, she felt like her medications were working, but due to the effect the situation had on her, she voluntarily did not drink for approximately eight months, as she wanted to allow her brain time to rest and heal. (GE 2; GE 4; GE 5; Tr. at 30-31, 47-51)

Applicant did not recall if the inpatient facility recommended that she abstain from alcohol and drugs. Nor did she read the medication instructions for the prescriptions that she received. According to the records that she provided in her response to interrogatories, at least one of the medications she was prescribed in April 2015, indicated that a person taking the prescription should "[a]void alcoholic drinks." (More than one of the medications she was prescribed at that time, also indicated that it was recommended, "Give your health care provider a list of all the medicines, herbs, non-prescription drugs, or dietary supplements you use. Also tell them if you smoke, drink alcohol, or use illegal drugs. Some items may interact with your medicine.) As stated above, for approximately eight months after her hospitalization, Applicant voluntarily abstained from alcohol. She does not recall receiving any specific recommendations from her treating physicians to abstain from alcohol. (GE 2; GE 4; GE 5; Tr. at 30-31, 47-51; Tr. 2 at 24)

After Applicant was discharged from the inpatient facility in April 2015, she started receiving treatment from Facility X, which is an outpatient facility specializing in psychotherapy, substance use disorders, and other related therapies. She has received consistent treatment from this facility up until at least the reconvened hearing.

I did not expect to have a manic episode. But it ended up being a blessing. ...[O]nce I got to [Facility X], and ultimately ended up following up with them, they just really know what they're doing. ... [T]hey're experts in their field and it's been a great thing. And I did follow up with my psychiatrist every three months, I believe. And of course, I can always call and get in sooner if I need to. (Tr. at 31-32)

At Facility X, Applicant primarily saw Dr. A, a psychiatrist, from April 2015 to February 2017, when her treating psychiatrist became Dr. B. In Applicant's medical records, Dr. B noted that in October 2018, Applicant had bipolar II disorder, generalized anxiety disorder, and ADHD. She found Applicant's thought process, at that time, to be logical and coherent. (GE 3)

Applicant's medical records from Facility X reflect that she became more compliant with taking her medication the longer she received treatment from this specialized facility. Additionally, her prognosis improved and the frequency of her appointments decreased. Throughout the notes in the records, it is apparent that Applicant self-reported periods of non-compliance with various prescribed medications. In her February 2018 appointment, Applicant disclosed that she had discontinued taking Zoloft due to its side effects, and she and Dr. B developed a new treatment plan. At various points in her treatment, Applicant discussed discontinuing other medications with Dr. B based upon side effects she was experiencing. Her most significant non-compliance with taking medications was noted in February 2017, when she discontinued taking her medications for three weeks, but she self-reported this to Dr. B. At the hearing, Applicant explained that she stopped taking one of her prescriptions, because it would get stuck in her throat. Applicant was required to undergo a procedure under general anesthesia, as the medication had burned her throat. She did not like taking this medication, and at the hearing could only recall discontinuing this specific medication. (GE 3; Tr. at 45-46; Tr. 2 at 20-21)

Following her 2015 manic episode and bipolar I disorder diagnosis, Applicant slowly resumed consuming alcohol again in approximately 2016, while she was receiving treatment at Facility X. She explained that she felt comfortable drinking because she was in a good place with her psychotropic medication. Applicant disclosed that she was consuming alcohol to both Dr. A and Dr. B. Applicant's records reflect that she also disclosed to Dr. B, her prior DUIs and her earlier history of drinking related to her depression. Dr. B did not diagnose Applicant with an alcohol-related disorder nor did she note that Applicant should discontinue drinking due to her prescribed medication. (GE 3 at 25, 27; GE 5; AE A; AE N; AE O; Tr. at 52-53; Tr. 2 at 24-25)

At the hearing, Applicant testified that her current mental health condition is positive. She been receiving treatment every three months by her treating psychiatrist,

Dr. B. Since receiving treatment at Facility X, where she received specialized treatment for the first time since she was diagnosed with a psychological condition, she has received better medications, has realized how much she needs them, and how important they are to her wellbeing. Her medications are currently working for her. She saw her psychiatrist the week before the first hearing. She takes her medications as prescribed and has no intention of discontinuing them.. (Answer; GE 3; GE 5; AE A; AE O; Tr. at 32, 45-46, 56-57)

On September 26, 2018, Applicant was evaluated by a board certified neuropsychologist hired by the DOD CAF to perform an evaluation. Applicant met with the psychologist once for approximately two to three hours. The psychologist noted that Applicant was punctual, friendly, open, exhibited poor recall, showed no signs of psychosis, and she had normal affect. The psychologist administered the Personality Assessment Inventory (PAI) test. Applicant's results indicated that her clinical profile was entirely within normal limits, and there were no indications of significant psychopathology. "Her profile indicates that she is generally a confident, resilient, and optimistic person." (Tr. at 68; GE 5)

The psychologist reviewed records provided to her by the DOD CAF, but her report did not provide a detailed list of the documents she reviewed. Based upon statements in her report, she reviewed records that were not offered into evidence at the hearing by the Government, as various statements and references are not corroborated by the Government's exhibits that are in the record. Applicant signed multiple releases for her treatment records at Facility X. However, the psychologist completed her evaluation on October 23, 2018, less than a month after interviewing Applicant. The Government received a copy of Applicant's records from Facility X on January 21, 2019, but did not apparently submit them to the psychologist for an updated report. Additionally, in her September 2019 response to DOHA interrogatories, Applicant provided a copy of the April 2015 treatment records from the inpatient treatment facility mentioned above. Based upon her report, it is unclear if the DOD CAF psychologist reviewed a summary of the April 2015 records from the Report of Investigation (ROI) or the actual records. (GE 3; GE 5)

Based upon the documents available to her, her interview of Applicant, and the results of the PAI test, the DOD CAF psychologist determined that as of October 2018 Applicant's:

Bipolar Disorder is quite severe and likely to require medical management for the foreseeable future. She maintains that she has been consistently on her mood stabilizing medications for three years though this could not be verified by her current prescribers.... Assuming [Applicant's] report is accurate that she is fully adherent to her medication regiment, that is clearly favorable to her and additionally, she seems to have a supportive family that helps her when she has a symptom breakthrough of her disorder, which is quite favorable. However, through the clinical interview, it is apparent that it is not uncommon for her to have some breakthrough symptoms of mania on occasion, despite her claims of medication compliance. Again, given the

lack of any substantiating records, it is unclear whether [Applicant] is disclosing these breakthrough symptoms to her treating psychiatrists or whether they have considered titrating her medications accordingly. (GE 5)

The DOD CAF psychologist noted that regarding Applicant's alcohol consumption:

Of greatest concern is applicant's clear history of Alcohol Use Disorder, particularly given her concomitant Bipolar I Disorder. My aforementioned inability to obtain any contemporaneous records from her treating psychiatrists or discuss [Applicant's] case with them has not allayed concerns about her alcohol consumption or determine if her treating doctors are even aware she consumes alcohol while on her specified medication regimen. While the amount of alcohol [Applicant] claims to consume may be relatively moderate for individuals without a concomitant serious mental illness, I am concerned that any amount of alcohol consumption in light of her co-occurring Bipolar Disorder may be contraindicated, given the severe nature of her symptoms as discussed above. As such, these factors indicate a guarded prognosis. (GE 5)

The psychologist's 2018 report opined that at some point, Applicant's drinking may have become somewhat problematic again for a period, following a traumatic incident when she was 30. However, after speaking to her mother, she reduced her consumption. Ultimately, the psychologist determined that, "Applicant's psychological condition and her alcohol consumption may have an untoward effect on her judgment, reliability, and trustworthiness. (GE 5; Tr. 2 at 21)

Applicant discontinued drinking alcohol after she received the SOR in early December 2019. She attended 47 AA meetings from December 2019 until March 2020, when in-person meetings were cancelled due to the COVID-19 pandemic. From March 2020 until the time of the hearing, she has been reading AA literature and the AA Big Book three to four times a week, and she has been attending church. She intends to continue to abstain from alcohol. Since she started working for her current employer in 2016 until 2019, when she discontinued drinking, she drank two or three times a week, but would typically consume less than one beer. When she was interviewed May 2017, by a Government investigator, Applicant indicated that she did not believe she had a problem with alcohol. At the hearing, she reiterated that she does not consider herself to be an alcoholic but recognizes that "alcohol has caused enough problems in [her] life – with two DUIs, and now with the SOR – it's best to just leave it alone at this point." (GE 4; AE B; Tr. at 33-36, 57-59, 72)

The DOD CAF psychologist also indicated that Applicant had trouble remembering things during the interview; therefore, she concluded that Applicant was not as well stabilized as she claimed. At the reconvened hearing in May 2021, Applicant explained that she was nervous and anxious about the evaluation due to its importance. In addition, she suffers from Attention-deficit Hyperactivity Disorder (ADHD), which could have affected her recall ability during her interview with DOD CAF psychologist. Applicant

underscored that she was not having a manic episode at the time of her interview, which the DOD CAF psychologist suggested in her report. (GE 5; Tr. 2 at 18-20)

At the reconvened hearing, Applicant testified that she had issues with the CAF's 2018 psychology report. When she met with the psychologist, the psychologist, told her that she did not have any of Applicant's medical records. Prior to meeting with the CAF psychologist, Applicant had signed release forms for all of her medical records. She asked the CAF psychologist if they could call Facility X together to try to get copies of her records. They spent 45 minutes on the phone together trying to get the records faxed to the CAF psychologist. A week later, Applicant followed up with the CAF psychologist, who told her that she had not received the records yet. Applicant contacted Facility X again to try to get the records to the CAF psychologist. (Tr. 2 at 15-16)

Applicant's treating psychiatrist, Dr. B, wrote medical status letters in November 2019, December 2020, and April 2021 for her. Dr. B's November 2019 letter, stating that Applicant has been compliant with her appointments and medication regimen and her "mental illness has been stable. She showed good insight and judgement toward her condition and necessary steps to maintain remission of her illness." In her December 2020 letter, Dr. B reiterated that Applicant's "mental health condition has been stable and in remission in the past year and a half with no medication adjustments needed. [Applicant] has been sober from alcohol for over a year now and denied having cravings for alcohol. She has continued using AA philosophy to maintain sobriety. [She] has been compliant with her medications and appointments and has been seen by psychiatrist every three months for the past year." (Answer; AE A; AE N; Tr. at 32; Tr. 2 at 24-25)

At the reconvened hearing, Applicant provided an updated letter from Dr. B, to respond to the issues raised in the 2018 DOD CAF report. In it, Dr. B's reported Applicant's current diagnoses, which considered the findings of the DOD psychological evaluation from 2018:

[Applicant] has been seen by several [Facility X] psychiatrists since 2015. She has been followed by this provider since February 2017 for Other Schizoaffective Disorder (F25.8), Generalized Anxiety Disorder (F41.1), Attention-deficit Hyperactivity Disorder, combined type (F90.2), History of Alcohol abuse, currently in remission.

[Applicant] has been having her symptoms well controlled after last medication adjustments on 6/20/2019. [Applicant] has been showing good insight in her condition and has been compliant with her medications and appointments. [Applicant] has been showing determination and ability to stay sober and maintain her best ability to function. She has not been a threat to herself or others. PDMP has been monitored and no concerns about filling habits were found.



Of note, Dr. B, indicated that Applicant's history of alcohol abuse disorder was in remission. Additionally, she changed Applicant's diagnosis from bipolar I disorder to Other Schizoaffective Disorder. (AE O; Tr. 2 at 24-25)

At the first hearing in April 2021, seven work-related witnesses testified for Applicant. They are aware of the allegations in the SOR, and they all possess either secret or top secret security clearances. None of them have concerns regarding Applicant having access to classified material. (Tr. at 71-72)

Witness 1 (W1) has known Applicant since April 2016, and is her current supervisor. They have socialized outside of work, and she has never observed her consume alcohol. According to W1, Applicant does great work, she's very thorough, people love working with her, and she is a great employee. W1 is aware of the issues raised in the SOR and has never witnessed "at any point...anything that made [her] hesitant in any way either as an employee or as a friend." (Answer; Tr. 77-84)

Witness 2 (W2) has known Applicant since April 2016. They are part of the same security team and work closely together. He considers her to be very conscientious. She has a great reputation and is known for thoroughness. He has held a top secret security clearance for three years and held a secret security clearance for approximately fifteen prior years. W2 has never observed Applicant exhibit any behavior that caused him concern. They have only interacted outside of work a couple of times, and he has never observed her consume alcohol. (Tr. 84-90)

Witness 3 (W3) has held a top secret security clearance for approximately fifteen years. He has known Applicant since April 2016, and interacts with her daily. She is always timely, reliable, dependable, a very fast learner, and "an absolute energetic team player." W3 has never observed Applicant exhibit behavior that caused him concern. (Tr. 91-96)

Witness 4 (W4) has held a security clearance since 1999, and currently holds a top secret security clearance. He is a retired combat Marine. Applicant works for him on his security team, and he is her senior rater; they interact daily. He wishes that he "had ten of her. She does amazing work, outstanding work, and she's relied upon heavily because she gets the job done, right, on time, every time." He has never observed Applicant exhibit behavior that caused him concern, or seen any indications of alcohol abuse. (Tr. 96-101)

Witness 5 (W5) has held a security clearance since 2007, and currently holds a top secret security clearance. She has known Applicant since 2018, has been her direct supervisor since 2020, and interacts with her daily. Applicant is one of her most valued team members and "goes way above and beyond." W5 has never observed Applicant exhibit behavior that caused her concern, or any indications of alcohol abuse. (Tr. 102-106)

Witness 6 (W6) is a retired U.S. Army officer. He has held a security clearance his entire professional career. He has known Applicant since approximately 2017, and works with her daily. He considers Applicant to be an excellent worker and has received nothing but compliments regarding her work performance. W6 has never observed Applicant exhibit behavior that caused him concern, or any indications of alcohol abuse. (Tr. at 106-112)

Witness 7 (W7) has known Applicant since 2019. They have been co-workers since 2020, and interact daily. He stated, "She is an impeccable addition to this team. She saves our backsides more often than we save hers." W7 has never observed Applicant exhibit behavior that caused him concern, or any indications of alcohol abuse. (Tr. at 112-116)

Witness 8 (W8) has been Applicant's boyfriend since 2015. He is aware of the SOR allegations. He has no concerns regarding her mental health and considers her to be well-adjusted. She regularly visits her physician and takes her medication. She has never expressed a desire to discontinue taking her medication with him. Prior to the issuance of the SOR, W8 knew Applicant consumed alcohol, but never observed it being a problem or saw her drinking to excess. Since December 2019, he has not observed her consume alcohol. (Tr. at 116-124)

The DOD CAF psychologist also opined that although it is "not uncommon for patients to have difficulty recalling specific events surrounding manic/psychotic episodes, [Applicant's] confusion for recall of other major life events was particularly concerning." Department Counsel, who was the only person at the original hearing who had read GE 5, did not question Applicant's witnesses to determine if any of them had ever observed Applicant acting confused or scattered either at work or outside of work. However, none of Applicant's witnesses testified that she was prone to confusion or scattered thinking. (GE 5)

Applicant's performance evaluations and numerous awards demonstrate that she is a highly valued employee of her company who "greatly exceeds expectations." As noted in one of her awards, she:

"[r]egularly achieves highly impressive results that surpass agreed outcome-based goals"; "[d]emonstrates initiative and willingness to go beyond own job requirements"; [and has] "[s]trong interpersonal skills and organizational knowledge which contributes success to the team and [company]."

Applicant's current credit score is 825. (Answer; AE E-L; AE N; AE M)

## Policies

“[N]o one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).) As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” (*Egan* at 527.) The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2.)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Adverse clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7.) Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing national security eligibility.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (Directive ¶ E3.1.14.) “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).) The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. (ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).) Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15.) An applicant has the burden of proving a potential mitigation, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).)

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.) “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; See also AG ¶ 2(b).)

## Analysis

### Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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 includes several conditions that could raise security concerns under AG ¶ 22. The following are potentially 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 alcohol use disorder; and

(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.

Applicant's two DUI arrests and the 2018 diagnosis by the DOD CAF psychologist establish the above disqualifying conditions.

AG ¶ 23 provides conditions that could mitigate security concerns raised under this guideline. Three 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 good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(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.

Applicant had two DUIs over twenty years ago when she was abusing alcohol to self-medicate her undiagnosed and untreated psychological conditions. After successfully completing a treatment program in 2004, she maintained a three-year period of sobriety. In 2004, Applicant was diagnosed with bipolar disorder (not specified), and started receiving treatment for her depression and other psychological conditions, and she gradually resumed drinking in a responsible manner. She continued to consume alcohol for ten years with no incidents or other alcohol-related issues. Applicant disclosed her consumption of alcohol to her treating physicians, and they did not advise her to refrain from consuming alcohol due to either her underlying medical conditions or her prescribed medications.

Following Applicant's 2015 manic episode and subsequent inpatient treatment, Applicant voluntarily abstained from alcohol for approximately eight months. In 2016, she consumed alcohol again moderately, disclosed her consumption to her physicians, and had no additional alcohol-related incidents or issues. Throughout Applicant's Facility X treatment records, she disclosed her consumption of alcohol, yet her treating psychiatrists did not diagnosis her with an alcohol-related disorder nor recommend that she discontinue or decrease her consumption of alcohol.

In October 2018, the DOD CAF psychologist diagnosed Applicant with alcohol use disorder, severe. However, it is unclear from the psychologist's report what specific records were reviewed in making this determination. Additionally, it is known for certain that the doctor did not review Applicant's medical records from Facility X, the specialized facility that treats individuals for a variety of psychiatric conditions, including addictions.

In December 2019, after the issuance of the SOR, Applicant voluntarily chose to abstain from alcohol, even though she does not consider herself to have an alcohol-related disorder. She has maintained her sobriety for almost two and a half years and regularly utilizes the principles of AA and her church to help her. She experiences no alcohol cravings, which was confirmed by her treating psychiatrist. None of Applicant's work-related witnesses have observed her consuming alcohol. Her boyfriend of over five years has never observed her abuse alcohol and testified to her sobriety. In April 2021, her treating psychiatrist indicated her history of alcohol abuse was in remission. Applicant mitigated the Guideline G concerns.

## **Guideline I: Psychological Conditions**

The security concern relating to the guideline for psychological conditions is set out 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 includes 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;
- (c) voluntary or involuntary inpatient hospitalization; and
- (d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

The record evidence established the above disqualifying conditions. Since she was a young child, Applicant has suffered from depression. In 2004, she was diagnosed with bipolar disorder (not specified), and she has subsequently been diagnosed with bipolar I disorder and received voluntary inpatient treatment in at least April 2015. At various times, Applicant has not been 100% compliant with various prescription treatment plans.

AG ¶ 29 provides the following conditions that could mitigate security concerns in this case:

(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 has suffered with physiological disorders since at least 2004. At that time, she was diagnosed with bipolar disorder, a life-long condition that is treated with pharmacological and talk therapy intervention. Since April 2015, she has regularly received treatment from the same mental health practice, and she has seen the same psychiatrist since February 2017. Since her diagnosis was recently modified, she continues to follow her medication management plan. Her treating psychiatrist confirms her compliance and verifies her attendance at appointments. Although in the past, she had not been 100% compliant with her treatment plan, there is sufficient evidence to demonstrate that since starting treatment at Facility X in 2015, she is psychiatrically stable and functioning at an appropriate level.

The 2018 DOD CAF report indicated Applicant's psychological condition and her alcohol consumption may have an untoward effect on her judgment, reliability, and trustworthiness. It is difficult to afford much weight to this report given the inherent problems that exist within the basis of the opinion. The report does provide details as to what documents were reviewed, and it is clear that the Government did not obtain actual copies of Applicant's medical records from her April 2015 inpatient treatment and Facility X until after the psychologist completed her assessment. She may have reviewed ROI summaries of various medical records, but because she failed to provide a list of the documents she reviewed it is not possible to determine how she arrived at her conclusions. Throughout her analysis, she indicates that she did not have copies of Applicant's most recent treatment records (from Facility X). Additionally, her one-time meeting with Applicant was two to three hours, whereas, Applicant has been seeing her treating psychiatrist regularly since February 2017.

The seriousness of Applicant's underlying psychological conditions is not to be minimized. However, the statements of seven work-related witnesses, many of whom have worked with her daily and have known her since April 2016, credibly attest to her ability to function and perform at a high level on a consistent basis. Those favorable statements are buttressed by her work performances reviews and many awards and letters of appreciation. Applicant has a lifelong psychological condition that she is properly managing through consistent treatment with her physician. She is open and forthright with her employer and coworkers regarding her condition, and they have not observed it affecting her ability to perform her job. Mitigation was established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated psychological conditions and alcohol consumption security concerns at issue. Accordingly, Applicant has carried her burden to show that it is clearly consistent with the interests of national security of the United States to grant her eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline I:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT



Subparagraphs 2.a – 2.b:

For Applicant

**Conclusion**

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. National security eligibility for access to classified information is granted.

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CAROLINE E. HEINTZELMAN  
Administrative Judge