



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



In the matter of:)
)
) ISCR Case No. 20-01829
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

02/01/2022

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On December 16, 2016, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories, and also asked him to verify the accuracy of an investigator’s summary of an interview. He responded to those interrogatories and verified the interview summary on August 31, 2020. On December 14, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD

4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement and Substance Misuse), Guideline F (Financial Considerations), and Guideline E (Personal Conduct), and detailed reasons why the DCSA CAF adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In sworn statements, initially dated December 22, 2020, but incomplete, and then completed on January 6, 2021, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to him by DOHA on August 30, 2021, and he was afforded an opportunity, within a period of 30 days, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, he was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on September 2, 2021. His response was due on October 2, 2021. He timely submitted a brief one-page statement, and it was admitted into evidence without objection. The case was assigned to me on December 13, 2021. The record closed on October 2, 2021.

Findings of Fact

In his completed Answer to the SOR, Applicant admitted most of the factual allegations pertaining to alcohol consumption (SOR ¶¶ 1.a. through 1.c.), both of the factual allegations pertaining to drug involvement and substance misuse (SOR ¶¶ 2.a. and 2.b.), one of the factual allegations pertaining to financial considerations (SOR ¶ 3.a.), and most of the factual allegations pertaining to personal conduct (SOR ¶¶ 4.d. through 4.g.). He either denied or failed to address the remaining allegations, and those that he failed to address are considered as denials. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Background

Applicant is a 39-year-old employee of a defense contractor. He has been serving as a security guard with his current employer since August 2014. He previously worked for other employers as a metal worker (June 2014 – August 2014), and as a county sheriff jailer (April 2014 – June 2014). He briefly attended a community college for three months in 2013, but did not receive a degree. He enlisted in the U.S. Navy in September 2006 and remained on active duty until October 2012 when he was honorably discharged. He reportedly received an 80% disability rating from the U.S. Department of Veterans Affairs. He was married in 2009 and divorced in 2010. He was granted a secret clearance in January 2007.

Alcohol Consumption and Personal Conduct

Based on Applicant's inconsistent responses to various inquiries regarding his consumption of alcohol over the years, he is not considered to be a reliable or accurate historian of such facts. When Applicant completed his SF 86 in December 2016, he reported in Section 24 – Use of Alcohol, that in the last seven years, his use of alcohol had never had a negative impact on his work performance, his professional or personal relationships, his finances, or resulted in intervention by law enforcement or public safety personnel. He also denied ever seeking or receiving counseling or treatment related to his use of alcohol. (Item 4, at 30-31) He did, however, report in Section 22 – Police Record, one alcohol-related incident (an arrest for driving while intoxicated (DWI) in 2002) for which the charges were subsequently dropped. (Item 4, at 28-29)

Applicant was interviewed by an investigator from the U.S. Office of Personnel Management on January 4, 2019. During that interview, he acknowledged that during the evening in question, thought to have occurred in August 2002 or possibly October 2004, he had consumed one beer at a bar before driving home with a friend. While on a very narrow road in an area of construction, his vehicle's side-view mirror collided with the side-view mirror of another vehicle. He stopped, but the other driver initially fled the scene but returned. Applicant acknowledged that he was upset and rude to the officer. After participating in a field-sobriety test – which he thought he failed – he was charged with DWI, a misdemeanor, on October 28, 2004, arrested, and taken to the local jail. A breathalyzer test was administered to him, and he reportedly blew .06, below the legal limit. He was released the following morning. Applicant eventually went to court accompanied by an attorney. He contended that the charge was dismissed, and the Federal Bureau of Investigation (FBI) Rap Sheet indicated that the prosecutor changed the charge. Applicant was required to pay only court fees and attorney fees totaling approximately \$3,000. (Item 5, at 3; Item 8, at 5)

It is unclear when Applicant actually started consuming alcohol, for he acknowledged, as noted above, having done so in either 2002 or 2004. However, during the same interview, Applicant contended that he consumed alcohol while he was in the Navy from 2006 until 2012. He denied drinking when he out to sea, during periods of one to four weeks at a time. When he had one or two days off, he usually consumed 7 to 10 beers over a 10 to 12-hour period. He enjoyed beer, claimed to have a high tolerance for it, and denied drinking to get drunk. He acknowledged becoming intoxicated after consuming a 6-pack of beer in four hours, and he did so on three or four occasions each month. From 2012 until June 2018, he consumed 6 to 8 beers on his days off, and no more than a case containing 12 beers during a one-week period. (Item 5, at 5-6)

In August 2020, Applicant responded to interrogatories. His estimate of alcohol consumption was now reported as two beers a day on his days off and also as never more than a 6-pack at home on days off, and if friends come over, 12 beers with them. (Item 5, at 13) He reported that he was last intoxicated in August 2010. (Item 5, at 14)

On June 13, 2018, because of various health issues, Applicant decided to seek inpatient treatment at a drug and alcohol rehabilitation center. His stated reason to the treatment center for seeking treatment was:

The reason I'm here is drinking and driving . . . eventually I'm going to get picked up by the police, might kill someone on the road . . . I just don't give a shit anymore about anything.

(Item 7, at 1)

He reported his "drug of choice" was alcohol, and that he had been drinking it for 13 years. In a separate section he admitted that he had been drinking alcohol since he was 16-years old. He acknowledged drinking "beer all day every day and I'd throw whiskey on top of it," quantifying it as 24 beers and 6 shots regularly. In the past 72 hours, he reported that he had consumed 24 beers and 6 shots. His consumption during the past ten days was reported to be 180 beers and 6 shots total. (Item 7, at 1-2) He admitted that he had not had one sober day in the past seven years. (Item 7, at 16)

Based on the clinical interviews and testing, Applicant was diagnosed by the professional staff, in part, with alcohol use disorder, severe; cannabis use disorder, moderate; schizoaffective disorder, bipolar type; and post-traumatic stress disorder (PTSD). A master treatment plan was established and agreed to by Applicant. Nevertheless, he eventually declined his detoxification medication, stating that he didn't need it and wanted to be off detox. (Item 7, at 19-20) On his last day of treatment, his behaviors were described as resistive, paranoid, in denial, secretive, and manipulative. (Item 7, at 86) He chose to leave the rehabilitation program without having completed it, and did so on June 26, 2018, against medical advice. His prognosis was poor. (Item 7, at 35-36, 88, 98)

In January 2019, the Department of Defense (DOD) CAF, the predecessor of the DCSA CAF, requested a psychological evaluation of Applicant, based on his previous diagnoses, focusing on his mental health and alcohol dependence. A licensed psychologist reviewed his medical records, conducted a clinical interview, administered a variety of psychological tests, and made clinical observations. On February 20, 2020, the psychologist noted several factors of concern:

[H]is unwillingness to complete the program increases his chances for relapse in the future. The serious nature of his difficulties related to alcohol consumption, in conjunction with his significant clinical presentation resulting in a diagnosis of schizoaffective disorder, bipolar type is concerning. These two clinically relevant circumstances necessitated a psychological evaluation to assess judgment and reliability. His irresponsible drinking behavior almost 2 years ago was likely exacerbated by an untreated depressive or anxiety episode for which he self-medicated with alcohol. Further, his failure to seek treatment at the VA for his mood symptoms is concerning. His seemingly inherent tendency for social isolation also presented a set of circumstances where his alcohol

consumption went unnoticed and/or unchecked by others. . . . [H]is failure to follow-through with necessary treatment at both the VA and at [the previous rehabilitation center] gives pause because of his inability to recognize psychological symptomatology and to seek treatment for any difficulties he might experience in the future.

(Item 6, at 4)

Based on the available information, the psychologist concluded that Applicant did not currently meet *the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5)* diagnostic criteria for any mental health disorder. Nevertheless, his diagnostic profile was substance-induced psychotic disorder, with severe alcohol use disorder, in sustained full remission; alcohol use disorder, severe, by history, by report; and schizoaffective disorder, bipolar type, by history, by report. She also noted that Applicant's

future focus and ability to verbalize realistic life goals also are consistent with a more mature attitude regarding alcohol consumption. He is very aware of the potential significant ramifications, both personally and legally, if he should revert to past maladaptive behavior patterns regarding alcohol. That said, his risk of relapse is considered above average at this time, despite the 2-year period of responsible drinking in moderation and increased use of adaptive coping skills. Consequently, the prognosis for [Applicant] is considered average, at best.

(Item 6, at 5)

The psychologist added that when she attempted to resolve discrepancies between self-reported, versus documented, substance use history of both alcohol and marijuana, and when she shared his previous medical records, Applicant continued to persistently deny any more extensive use of alcohol, saying only that his prior treatment providers must have misunderstood him. As such, she had concerns about Applicant's candor. (Item 7, at 5)

On August 1, 2020, after consulting with the CAF to ensure that she had the fact pattern correct, the psychologist contacted Applicant to offer him a second opportunity to clarify what she considered to be a "significant discrepancy" between his self-reported alcohol and cannabis use and that which was documented in the record. He stuck to his earlier story. As such, she saw his substantive lack of candor as a "significant concern regarding his overall trustworthiness." She added: "If an individual cannot honestly clarify concerns that are pointed out to him, even when he is aware that the reviewing clinician has the factual medical record in hand, then that speaks poorly to his trustworthiness in my opinion. . . ." (Item 7, at 7)

On October 14, 2020, after reviewing Applicant's responses to the interrogatories identified above, she essentially reversed her opinion and diagnosis:

Based on his recent admitted ongoing pattern of alcohol consumption, which is contraindicated by medical recommendations, it is clear that his prior significant Alcohol Use Disorder (AUD) diagnosis, is not in remission. In this case, he has multiple factors that pose a significant risk to his judgment, reliability, stability, and trustworthiness when performing sensitive national security duties or safeguarding classified information including: 1) a significant alcohol use disorder for which he sought inpatient rehabilitation treatment; 2) his inability or unwillingness to complete the inpatient treatment program; 3) his inability or unwillingness to engage in recommended follow-up treatment; 4) his previous lack of candor and inability or unwillingness to rectify the discrepancy between his reported alcohol and substance use with that which is documented in the record; and 5) his recent self-admission of ongoing maladaptive drinking patterns meeting criteria for an AUD in his response to interrogatories.

(Item 6, at 8)

In his Answer to the SOR, Applicant essentially admitted that he had lied to the psychologist regarding his alcohol consumption when he claimed he was only consuming 2-to-3 beers per week, and he was actually consuming up to 12 beers in a single day. (Item 3, at 3) He also falsely denied that, as of December 14, 2020, he continued to consume alcohol against the treatment advice and recommendations of the alcohol rehabilitation center professional staff.

On June 19, 2021, Applicant reentered the residential section of the alcohol rehabilitation center. On July 18, 2021, he was discharged after having successfully completing the addiction recovery coursework and residential treatment program. His discharge diagnosis was alcohol use disorder, severe; and post-traumatic stress disorder, unspecified. Among his aftercare follow-up appointments was that he attend Alcoholics Anonymous (AA) meetings and obtain a sponsor. No prognosis was given. (Item 5, at 22-23) In his Response to the FORM, he contended that he has been alcohol free since June 2021.

Drug Involvement and Substance Misuse and Personal Conduct

In addition to his maladaptive use of alcohol, Applicant's other substance of choice was tetrahydrocannabinol (THC), known as marijuana/cannabis - a Schedule I Controlled Substance. (<https://www.deadiversion.usdoj.gov/schedules/>; 21 U.S.C. § 812 (c)). He used marijuana with varying frequency from about 1998 through at least May 2018, and some of that use also took place after he had been granted a security clearance in January 2007. (Item 3, at 2) Yet, when he completed his SF 86 in December 2016, he falsely reported in Section 23 – Illegal Use of Drugs or Drug Activity, that during the last seven years, he had not illegally used any drugs or controlled substances. (Item 4, at 29) In his Answer to the SOR, he admitted deliberately falsifying his response.

During his June 2018 treatment at the drug and alcohol rehabilitation center, he reported that he began using marijuana at the age of 16, and that he last used it on June

30, 2018, when he took a few hits from a vapor pen. (Item 7, at 1) One of the clinical impressions was that he “may be minimizing his cannabis use.” (Item 7, at 12) As noted above, one of the diagnoses was cannabis use disorder, moderate. (Item 7, at 13) In his August 2020 response to interrogatories, he falsely denied ever using cannabis or marijuana. (Item 5, at 10) In his Answer to the SOR, Applicant admitted that he had lied. During his February 2020 psychological evaluation, Applicant stated that he had consumed marijuana in a brownie once or twice in his life, information that was noted to be at odds with the reported use made at the drug and alcohol rehabilitation center. (Item 6, at 2) In his Answer to the SOR, he admitted deliberately falsifying his response. As noted above, in August 2020, the initial profile of substance-induced psychotic disorder, with severe alcohol use disorder, in sustained full remission, was essentially reversed by the psychologist because of a “significant discrepancy” between Applicant’s self-reported alcohol and cannabis use and that which was documented in the record. (Item 6, at 5, 7) Applicant’s drug abuse does not appear to have been specifically addressed during his 2021 inpatient treatment. In his Response to the FORM, he contended that he has been drug free since June 2021.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (Enhanced Subject Interview, dated January 4, 2019); Item 9 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 3, 2017); Item 10 (Equifax Credit Report, dated October 14, 2020); and Item 3 (Answer to the SOR, dated January 6, 2021).

In his SF 86, Applicant admitted having one delinquent account with a balance of about \$1,200, and denied having any other delinquency issues involving routine accounts in the last seven years (referring to 2010 – 2016). A review of his 2017 credit report indicates that there are actually four delinquent accounts, including the one he reported. (Item 9, at 5-6) During his January 2019 OPM interview, Applicant had to be confronted with evidence of the other accounts. He acknowledged them and explained that he was unable to pay them because of his lack of education and poor income. He stated that he would contact his creditors within 30 days in an effort to resolve his accounts, or engage the professional services of an attorney to assist him with the collection agencies, or even obtain a loan from his parents to pay off his debts quickly. (Item 5, at 4-5) The record is silent as to what resolution actions were ever taken by him.

The SOR alleged two still-delinquent accounts totaling approximately \$13,232, as set forth below:

SOR ¶ 3.a. refers to a credit union credit-card account with a past-due and unpaid balance of \$6,713 that was placed for collection and charged off. The last payment made on the account was reported as February 2014. (Item 3, at 5; Item 9, at 5; Item 10, at 2) Although Applicant promised to start resolving the account during his 2019 OPM interview, he failed to furnish any testimonial or documentary evidence that he has yet made any efforts to do so, despite the passage of approximately three years since the promise was made. The account has not been resolved.

SOR ¶ 3.b. refers to a credit union credit-card account with a past-due and unpaid balance of \$6,519 that was placed for collection and charged off. The last payment made on the account was reported as February 2014. (Item 3, at 5; Item 9, at 5; Item 10, at 2) Applicant disputed the accuracy of the account, claiming that it was a duplicate charge with fees added. (Item 3, at 5) The account has a separate account number and unpaid balance from the other account with the same creditor. It appears that Applicant was confused because this account is listed by two different credit reporting agencies in his 2017 credit report, and that data is identical. (Item 9, at 5) Applicant failed to furnish any testimonial or documentary evidence that he has yet made any efforts to dispute the account or resolve it, despite the passage of approximately three years since his OPM interview. The account has not been resolved.

There is no evidence of financial counseling, a budget, or anything to describe with any specificity his current financial situation. Applicant did not report his net monthly income, his monthly household expenses, or any monthly debt payments. In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. There is a paucity of evidence to indicate that his financial problems are now under control, and it is difficult to determine if Applicant is currently in a better position financially than he had been.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).)

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).)

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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

The guideline notes conditions that could raise security concerns for Alcohol Consumption in AG ¶ 22:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (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.

Applicant was charged with and arrested for DWI in 2004. The charge was eventually dismissed or otherwise resolved, but he had to pay court costs and attorney fees. Starting to drink alcohol at the age of 16, he has a lengthy history of habitual and binge consumption of alcohol – self-reporting 24 beers and 6 shots regularly, or up to 12 beers in one day – and claiming that he had not had one sober day in a seven-year period. He was diagnosed by a duly qualified medical or mental health professional with alcohol use disorder, severe, and was evaluated on several occasions. He chose to leave one rehabilitation program without having completed it, against medical advice, and he continued consuming alcohol, also against treatment recommendations.

He was evaluated by a psychologist in 2020, and it was determined that he had repeatedly failed to be candid – in fact he lied – about his alcohol consumption history. His eventual diagnosis was alcohol use disorder, severe, and the prognosis was poor. In 2021, he was readmitted to the alcohol rehabilitation center, and successfully completed the addiction recovery coursework. His diagnosis was alcohol-use disorder, severe. Among the recommended aftercare follow-up appointments were that he attend AA meetings and obtain a sponsor. Applicant offered no evidence to indicate that he had ever complied with those aftercare recommendations. AG ¶¶ 25(a), 25(c), 25(d), and 25(f) have been established.

The guideline also includes examples of conditions under AG ¶ 23 that could mitigate security concerns arising from Alcohol Consumption:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or

does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

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

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

None of the mitigating conditions apply. Applicant has not been candid regarding his alcohol consumption history, and his stories keep changing depending on who is asking the questions, causing confusion among the professionals attempting to evaluate or treat him. While he has acknowledged some degrees of maladaptive alcohol use, other than his decisions to enter the drug and alcohol rehabilitation center in 2018 and again in 2021, he has failed to provide any evidence of positive actions taken to overcome his alcohol problems. Aside from his unverified claim in his Response to the FORM that he has been alcohol free since June 2021, he failed to demonstrate any pattern of altered alcohol consumption, much less a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations. His maladaptive use of alcohol as well as his lack of candor, continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline H, Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse is set out in AG ¶ 24:

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

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

In addition, on December 21, 2021, the DNI issued Memorandum ES 2021-01529, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, which states in part:

. . . disregard of federal law pertaining to marijuana remains relevant, but not determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position. . . .

Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 . . . , Questionnaire for National Security Positions.

The guideline notes some conditions under AG ¶ 25 that could raise security concerns in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance. . . .;
- (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;
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional;

(f) any illegal drug use while granted access to classified information or holding a sensitive position; and

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant was admittedly a recreational substance abuser of a Schedule I Controlled Substance - marijuana. He used marijuana from about 1998 through at least May 2018 with varying frequency. Considering his comment set forth in his Response to the FORM that he has been drug free since June 2021, it appears that he may have continued using marijuana after May 2018. Unfortunately, because of his lack of candor with the professionals seeking to evaluate or treat him, the accuracy of his repeatedly changing history of drug use is difficult to pin down. During part of that period he held a security clearance. During his June 2018 treatment at the drug and alcohol rehabilitation center, he reported that he began using marijuana at the age of 16, and that he last used it on June 30, 2018, when he took a few hits from a vapor pen. One of the clinical impressions was that he “may be minimizing his cannabis use.” He was diagnosed with cannabis use disorder, moderate. He chose to leave the rehabilitation program without having completed it, against medical advice.

In his August 2020 response to interrogatories, Applicant falsely denied ever using cannabis or marijuana. In his Answer to the SOR, he admitted that he had lied. During his February 2020 psychological evaluation, he stated that he had consumed marijuana in a brownie once or twice in his life, information that was noted to be at odds with the reported use made at the drug and alcohol rehabilitation center. In his Answer to the SOR, he also admitted deliberately falsifying that response as well. In August 2020, the initial profile of substance-induced psychotic disorder, with severe alcohol use disorder, in sustained full remission, was essentially reversed by the psychologist because of a “significant discrepancy” between Applicant’s self-reported alcohol and cannabis use and that which was documented in the record. Although he successfully completed the drug and alcohol rehabilitation center’s addiction recovery coursework and residential treatment program in July 2021, Applicant’s drug abuse does not appear to have been specifically addressed during that 2021 inpatient treatment program. Although he claimed to be drug free since June 2021, he failed to clearly and convincingly commit to discontinue such misuse in the future. AG ¶¶ 25(a), 25(c), 25(d), 25(e), 25(f), and 25(g) have been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

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

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and

has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(d) partially applies but neither of the remaining mitigating conditions apply. After approximately two decades of marijuana use, continuing until at least May 2018, and possibly as recently as June 2021, Applicant now claims he has been drug free. As noted above, his candor regarding his history of marijuana use is extremely poor, and he has admittedly falsified questions regarding that history. Other than his two efforts at seeking drug treatment in 2018 and 2021, he never provided evidence of actions taken to overcome this problem. Aside from his recent statement in Response to the FORM, there is no verifiable evidence to support his claimed abstinence from drugs. He has never addressed any disassociation from drug-using associates and contacts; or changing or avoiding the environment where drugs were used. Furthermore, he never provided a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

A person should not be held forever accountable for misconduct from the past. Continued abstinence is to be encouraged, but, when balanced against his full history of approximately two decades of marijuana use, the relatively brief period of one-half year of reported abstinence is considered insufficient to conclude that the abstinence will continue, especially considering his lack of candor. Applicant seemingly ignored laws, rules, and regulations regarding such use. Some of his marijuana use occurred while he held a security clearance, despite the fact that such use was prohibited by both the Federal Government and government contractors. His drug use, especially while holding a security clearance, as well as his lack of candor, continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations;

The SOR alleged two still-delinquent accounts totaling approximately \$13,232. Applicant acknowledged them and explained that he was unable to pay them because of his lack of education and poor income. AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence to support the establishment of AG ¶¶ 19(b).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant stated that he was unable to pay his still-delinquent bills – both of which remained unpaid since 2014 – because of his lack of education and poor income. He indicated to the OPM investigator in January 2019 that he would contact his creditors within 30 days in an effort to resolve his accounts, or engage the professional services of an attorney to assist him with the collection agencies, or even obtain a loan from his parents to pay off his debts quickly. The record is silent as to what resolution actions were ever taken by him.

A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))). Between the date of the OPM interview in January 2019 and the date of his response to the FORM in September 2021, he made no claimed or verifiable efforts to address either of the delinquent debts.

Based on the evidence, it appears that Applicant actually ignored his delinquent accounts for a substantial multi-year period. Because of his failure to address either account over the entire period, the overwhelming evidence leads to the conclusion that his financial problems are not under control or that he is not truly interested in resolving them. He has not acted responsibly by failing to address his delinquent accounts and by failing to make limited, if any, efforts of working with his creditor. The Appeal Board has previously commented on such a situation:

Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018) In this instance, Applicant has failed to offer any evidence that he has even begun making such efforts in the past three years.

Clearance decisions are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not

require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, since he made the statements to the OPM investigator, Applicant offered no specifics regarding any repayment efforts; submitted no documentary evidence to reflect any payments made; and only made promises of proposed actions. Neither delinquent debt has been resolved.

The nature, frequency, and recency of Applicant's financial difficulties, and his general failure to voluntarily and timely start to resolve them after August 2019, is sufficient to conclude that his financial difficulties were not infrequent. The timeliness of his efforts to resolve his debts is not good, and the delay in commencing to do so, is another negative factor.

The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

There is no evidence of financial counseling or a budget. Applicant's inaction, under the circumstances, casts doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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

an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes examples of conditions that could raise security concerns under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

My discussions related to Applicant's alcohol consumption, drug involvement and substance misuse, and financial considerations, are adopted herein. In fact, some of the allegations under Guideline E are identical to the ones under Guidelines G, H, and F, and the credible adverse information alleged under those guidelines is sufficient for an adverse determination solely under those individual guidelines. In addition, as noted above, Applicant deliberately falsified and/or omitted material facts on his SF 86 in 2016; he falsified and/or omitted material facts regarding his histories of drug use and alcohol consumption when he was being evaluated by a licensed psychologist in 2020; and he falsified and/or omitted material facts in his 2020 response to the interrogatories. AG ¶¶ 16(a), 16(b), and 16(e) have been established.

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

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the conditions apply. Applicant's maladaptive alcohol use, his drug involvement and substance misuse; his use of marijuana while he held a security clearance, his financial considerations, and his repeated lack of candor and deliberate falsifications and omissions, raise significant concerns about him and continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

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

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

There is some evidence mitigating Applicant's conduct. Applicant is a 39-year-old employee of a defense contractor. He has been serving as a security guard with his current employer since August 2014. He previously worked for other employers as a metal worker (June 2014 – August 2014), and as a county sheriff jailer (April 2014 – June 2014). He briefly attended a community college for three months in 2013, but did not receive a degree. He enlisted in the U.S. Navy in September 2006 and remained on active duty until October 2012 when he was honorably discharged. He reportedly received an 80% disability rating from the U.S. Department of Veterans Affairs. He was granted a secret clearance in January 2007. He claims that he has abstained from marijuana and alcohol since June 2021.

The disqualifying evidence under the whole-person concept is simply much more substantial. Applicant was a substance abuser whose substances of choice were marijuana and alcohol. Starting to drink alcohol at the age of 16, he has a lengthy history of habitual and binge consumption of alcohol – self-reporting 24 beers and 6 shots regularly, or up to 12 beers in one day – and claiming that he had not had one sober day in a seven-year period. He used marijuana from about 1998 through at least May 2018, and possibly up to June 2021, including during a period in which he held a security clearance. In June 2018, he was diagnosed by a duly qualified medical or mental health professional with alcohol use disorder, severe; cannabis use disorder, moderate; schizoaffective disorder, bipolar type; and post-traumatic stress disorder. He chose to leave the rehabilitation program without having completed it, against medical advice, and he continued consuming alcohol, also against treatment recommendations.

In August 2020, a psychologist's initial profile of Applicant's substance-induced psychotic disorder, with severe alcohol use disorder, in sustained full remission, was essentially reversed by the psychologist because of a "significant discrepancy" between Applicant's self-reported alcohol and cannabis use and that which was documented in the record. Applicant deliberately falsified and/or omitted material facts on his SF 86 in 2016; he falsified and/or omitted material facts regarding his histories of drug use and alcohol consumption when he was being evaluated by a licensed psychologist in 2020; and he

falsified and/or omitted material facts in his 2020 response to the interrogatories. He has taken no positive actions to resolve two delinquent accounts since he promised to resolve them three years ago.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her drug involvement and substance abuse and personal conduct. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b.:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a. through 4.g.:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge