



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



In the matter of:)	
)	
)	ISCR Case No. 22-00467
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

07/12/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline I, psychological conditions, Guideline H, drug involvement, and Guideline E, personal conduct. Eligibility for access to classified information is granted.

Statement of the Case

On April 1, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline I, psychological conditions, Guideline H, drug involvement, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on April 8, 2022, and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 9, 2023,

scheduling the hearing for April 20, 2022. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits (AE) A through G that were included in his answer to the SOR, and AE H through O were offered at the hearing. There were no objections to any exhibits, and all were admitted in evidence. The record was held open until April 26, 2023, to allow Applicant an opportunity to provide additional documents. He provided AE P. It was admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on May 1, 2023.

Procedural Matters

Department Counsel moved to amend SOR ¶ 1.d deleting the date October 22, 2022, and adding the date January 21, 2022. There was no objection, and the motion was granted.

Findings of Fact

Applicant admitted all of the allegations in the SOR with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He earned two bachelor's degrees and earned credits towards a master's degree. He was married to his first wife from December 2016 until she passed away in 2019. He remarried in March 2023. He has worked for his current employer, a federal contractor, since 2015. (Tr. 20; GE 1)

During Applicant's first marriage, his wife suffered from mental illness. She had a child from a previous relationship, and Applicant treated his stepdaughter like his own. Applicant testified that he was aware his wife had experienced significant and intense trauma in her past. She was abused by a previous boyfriend and had childhood trauma. She was participating in talk therapy, cognitive therapy, and was on medication. He and his first wife were together for about two and a half years before they married. He raised his stepdaughter almost by himself from the age of three until she was seven years. His wife was a flight attendant and would be gone for extended periods of time, and Applicant would care for the child. He and his stepdaughter had a close relationship. In early 2017, he and his wife attended marriage counseling to address communication issues. The counselor recommended he seek individual counseling. (Tr. 21-27, 79)

Applicant sought mental health treatment from a health center (HC) in April 2017. He reported to the mental health professional (MHP) that he was having difficulty focusing and concentrating. He was diagnosed with attention deficient/hyperactivity disorder (ADHD). He was prescribed medication. He stated that he also participated in treatment brought on by his relationship with his wife who was undergoing treatment for depression and extreme post-traumatic stress disorder (PTSD). He said she had an ongoing diagnosis of alcoholism and borderline personality disorder. He explained that as her partner and a person who loved her, these conditions led to stress and trauma in dealing with her behavior. While attending therapy, he was also evaluated for various mental

health issues to ensure a bipolar condition was ruled out, which it was. Applicant testified that he now manages his ADHD through diet, sleep, and exercise and is no longer on medication. (Tr. 22, 25-27, 42, 51-54; Answer to SOR; GE 3)

Applicant testified that his wife was prescribed medication for her mental health issues and was experiencing side effects, such as hallucinations and delusions. She was also abusing alcohol. She had participated in alcohol detoxification a couple of times. Her medications were changed, but her symptoms and side effects worsened. He testified that he was arrested in August 2017 on charges of domestic violence. He testified that his wife was not taking her prescribed medication, and he thought she was having flashbacks. He said that his wife attacked him, and he defended himself by wrapping his arms around her. He had injuries to his face. He was arrested for domestic violence but the charges were later dropped. (Tr. 29-30, 45-47, 55-59)

Applicant testified that in August 2017, his wife left him, and she left her daughter in his care. He was the sole provider for his stepdaughter until November 2017 when the police arrived at his home on Thanksgiving Day and escorted his stepdaughter from the premises. He understood that he had no legal rights to her, and he only ever saw her a few more times. Applicant was distraught and grieving at the loss of his stepdaughter. In November 2017, he reported to his MHP that he was experiencing anxiety due to his separation from his wife and loss of contact with his stepdaughter. He continued his regular appointments. (Tr. 22-25, 30, 62; Answer to the SOR)

In late December 2017, he learned that his wife had aborted their child. They had tried to conceive for two years but struggled due to his wife's physical health issues and were unsuccessful. The combination of losing access to his stepdaughter and learning of the abortion made him more depressed and mired in grief. In January 2018, he sought treatment and was admitted to a mental health facility for suicidal ideations. He continued his therapy to approximately April 2018 for grief because of the loss of his stepdaughter and familial stress. (Tr. 28-30, 66; Answer to the SOR)

Applicant disclosed on his January 2018 Questionnaire for National Security Positions (SF 86) that in January 2018 he purchased and used marijuana three times during one weekend while living in a state where it is legal. He had a security clearance at the time but did not have access to classified information. He testified that because of all of the family issues he was experiencing, with the loss of custody of his stepdaughter, and the separation from his wife, he thought he would try marijuana to relieve the stress. He believed because it was legal under state law, he was permitted to use it. He credibly testified that he was unaware that he was not permitted to use marijuana under federal law, but also acknowledged he should have known better. He has not used marijuana since that weekend and does not intend to use it in the future. He provided a signed letter of intent to never use or possess illegal drugs or misuse legal drugs in the future and agreed that his security clearance could be revoked if he violated his promise. (Tr. 43-45, 64-66, 113-118; Answer to the SOR; AE B)

Applicant provided the results of drug tests administered on June 3, 2022, March 25, 2023, and April 5, 2023, which showed he tested negative for illegal drugs. He provided a letter from his mother who said she had visited her son in June 2018, and he disclosed to her that he had used marijuana to help cope with the separation from his wife and stepdaughter. She had concerns about the policy of his employer because marijuana was legal in the state where he lived. She said her son told her that he believed it was permissible to use. (Tr. 47; AE D, H, I, P)

In July 2018, Applicant was arrested for domestic violence against his wife. Applicant denied he committed any act of violence. He believed it was a plot devised by his wife so he would be in jail and she could obtain items from the marital home. He indicated the incident was entirely fabricated and he had an alibi to her accusations in that he was not where she claimed he was located. He believed the allegation was made to obtain legal leverage for their pending divorce or were attributed to his wife's mental health issues because he believed she was not taking her medications and was consuming alcohol. He attributed her obtaining restraining orders against him in September 2018 and May 2019 to the same purposes as noted above. The charges and orders were all dismissed when Applicant's wife failed to appear in court. (Tr. 29-30, 41, 45-47, 77; Answer to the SOR)

During marriage counseling, Applicant disclosed that he was depressed and mentioned he had suicidal ideations. In December 2018, Applicant was at home and asleep. His wife tried to contact him by telephone and when he did not answer, she called the police. He explained to the police that he was seeking treatment for grief and was dealing with depression, but it was being handled through his private MHP. For reasons unbeknownst to him they admitted him under the Baker Act to a mental health facility. Applicant believes this was an attempt by his wife to ruin his reputation and gain leverage in their divorce proceeding. Applicant admitted he had suicidal ideations but did not attempt suicide. (Tr. 31,37-41, 66, 82-87)

Applicant's discharge summary from his December 2018 hospitalization notes that he was communicating with his ex-wife and was venting and instead of her calming him, she began screaming at him. He attempted to tell her that because of the way she treated him and interacted with him, he had become suicidal in the past. That was the end of the conversation, until the police arrived at his door. He denied he had attempted to deliberately harm himself. He had positives in this life and was gainfully employed. He was receiving support from his mother and brother and had strong religious beliefs. He was looking forward to a trip to India. He was discharged in January 2019 with a diagnosis by a medical doctor of depressive disorder, not elsewhere classified, major depressive disorder, single episode, unspecified, and unspecified depressive disorder. He testified that he was told to continue seeing his therapist. (Tr. 30, 40-41; GE 3)

Applicant was moving from one state to another and during the period of late 2018 to 2019, and he was traveling back and forth between the states. Also at some point, his wife had move to the new state. He testified that he followed up with a health care professional in the new state. Applicant provided a letter from Dr. MS, a licensed married

and family therapist (LMF) and licensed mental health counselor, who practiced in the new state. She provided a letter from October 2020 that stated she had treated Applicant since November 2018 and diagnosed him with adjustment disorder with anxiety as he was transitioning through divorce. She last saw him in December 2019 when they mutually decided to terminate services. He testified that they agreed he had continued therapy to the point where it was no longer necessary, and at that point he had a game plan to address any issues that may occur or bouts of grief he may experience. (Tr. 34-35, 66-75, 80-82, 87; AE C)

Applicant testified that his wife attempted suicide five times while they were married. In September 2019, she succeeded. She left a suicide note, hung herself, and was found weeks later at her house. It was determined that her cause of death was suicide. (Tr. 45)

On January 17, 2022, Applicant was evaluated by a government-approved psychologist, Dr. B. Based on her clinical interview, available medical and mental health treatment records, testing observations, and results of the Personality Assessment Inventory (PAI), she determined Applicant met the criteria for major depressive disorder, recurrent, severe in remission, bipolar disorder R/O¹ and Cluster B personality traits.² She noted Applicant had a history of psychiatric hospitalizations and domestic violence issues. He also had episodes of increased energy and activity as well as episodes of major depression. He was not in treatment for these conditions because she noted that Applicant felt he did not need mental health treatment. His prognosis was poor because he was not interested in treatment, which Dr. B noted would need to be regular and ongoing to prevent relapses of depression and possibly mania. She said due to inconsistencies she noted in information he provided to her and to the government investigator regarding his security clearance application it suggested he was dishonest. She noted his use of marijuana while he had a security clearance, which he acknowledged, also gave her concerns, although she did not discuss this as impacting his psychological issues. She had significant concerns about his judgment, trustworthiness, and reliability. (GE 4)

Applicant testified that he disagreed with many things Dr. B stated in her report noting they were inaccurate. He noted that his virtual evaluation was between one and two hours. Her conclusions that he perpetrated acts of domestic violence were not true. He noted she opined that he had unpredictable and violent behavior, which was untrue and based on false reports from his ex-wife. He said Dr. B saw this as inconsistent reporting and dishonest. He adamantly disagreed with her interpretation and willingness to accept these accusations without considering his information. Dr. B. concluded that he had episodes of increased energy and activity, such as formulating a plan to travel to

¹ www.rxlist.com:Rule out (R/O) term used in medicine meaning to eliminate or exclude something from consideration. For example, a normal chest x-ray may “rule out” pneumonia.

² The DSM-5 notes that personality disorders under Cluster B, which is called the dramatic, emotional, and erratic cluster, include Borderline Personality Disorder, Narcissistic Personality Disorder, Histrionic Personality Disorder and Antisocial Personality Disorder.

India, which were a concern. Applicant had planned a trip to India for a wedding that was subsequently canceled because the wedding was canceled. He took a trip to Aruba after he had completed his two bachelor's degrees because he was exhausted and not because he was using sleep as a coping mechanism for a manic episode. He denied he exhibited unpredictable and erratic behavior. He denied he lied and had recurring problems with the law, was aggressive, violent, and impulsive. He also disagreed with her evaluation that he was dishonest. Dr. B noted that he was in a tumultuous relationship with his wife and had suicidal ideations during this time, which prompted a diagnosis of major depressive disorder, and she had concerns that he was not currently in treatment. When he was evaluated by Dr. B, he was no longer married as his wife had been deceased since 2019. She noted that he reported on his security clearance application (January 2020) that he was going through some hard times but was in therapy and doing better. She said if he did have some insight for treatment, he did not have it at the time of the evaluation and therefore his prognosis was poor. (Tr. 32-33, 102-112; GE 4)

Applicant was re-evaluated in June 2022 by a licensed psychologist (LC). The LC noted that she had experience treating various disorders, particularly depressive disorders. They discussed his past suicidal ideations, Baker Act hospitalization, the loss of his stepdaughter and ex-wife. They also discussed his history of grief and his past counseling with Dr. MS. LC noted that Applicant reported that he was previously given the Personality Assessment Inventory and the screening yielded Bipolar Disorder. (This is incorrect according to Dr. B Bipolar Disorder had to be ruled out.) LC administered assessments for anxiety and depression. His scores were nonsignificant in the "none-minimal" range. She also reviewed the DSM-5 criteria for Bipolar I, II, and Major Depressive Disorder. Of the three disorders, Applicant only "endorsed 1 symptom of Major Depressive Disorder (diminished ability to concentrate/think) and the diagnosis requires 5 or more symptoms to be endorsed." (AE A) In LC's professional opinion, Applicant does not currently meet the criteria for Major Depressive Disorder or Bipolar I or Bipolar II Disorders. (Tr. 34, 89-102; AE A)

Applicant testified that he loved his first wife, despite their tumultuous relationship, which he attributed to her PTSD and trauma she experienced, along with her abuse of alcohol. The loss of custody of his stepdaughter had a devastating impact on him emotionally and mentally. When he learned his wife committed suicide, she had been deceased for several weeks before her body was found. Although their marriage had failed, she had been his best friend and he loved her. He could not understand why she would not take her medication. (Tr. 29)

Applicant remarried in 2023. He provided a letter from his new wife who is aware of the allegations in the SOR. She has known Applicant for four years. She has noticed positive changes in how he copes with his grief and loss. She noticed a substantial change in the first year of knowing him and continued consistency in the three subsequent years. She supports him in his goals. She described him as patient and understanding. (AE J, O)

Applicant testified that he has a good support system with his wife and family. He is looking forward to his future and starting a family. He has developed coping skills and participating in therapy has helped him. The loss of his wife and stepdaughter will always be with him, but its impact has diminished, and he has learned the proper way to deal with his loss. (Tr. 112)

Applicant provided performance evaluations from 2016 to 2021. He consistently took on additional responsibilities and successfully added value to various projects. His evaluations ranked him as “exceeded” and “significantly exceeded” goals. (AE F)

Applicant provided character letters describing him as a mentor, a leader, reliable, focused, respected, and dependable. He has a strong work ethic and is a vital member of the team. (Tr. 47-49; AE G, J)

Policies

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

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

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

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship

transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline I: Psychological Conditions

The security concern 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 interference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 28, and the following are potentially applicable:

- (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; and
- (b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and
- (c) voluntary or involuntary inpatient hospitalization.

SOR ¶ 1.a alleged that Applicant sought treatment from a mental health center from April 2017 to April 2018. SOR ¶ 1.b alleged that he sought treatment from a medical

center in January 2018 due to suicidal ideations. Seeking mental health treatment is not a disqualifying condition. A suicidal ideation is not a suicide gesture or attempt. There are no disqualifying conditions that apply to SOR ¶¶ 1.a and 1.b. I find for Applicant on these allegations.

Applicant was admitted to a health center in approximately December 2018 via the Baker Act and diagnosed with depressive disorder, not elsewhere classified, major depressive disorder, single episode, unspecified, and unspecified depressive disorder. AG ¶¶ 28(b) and 28(c) apply.

Applicant was diagnosed by a government-approved psychologist in January 2022 with major depressive disorder, recurrent, severe in remission and cluster B personality traits. AG ¶ 28(b) applies. SOR ¶ 1.d alleges that Applicant was diagnosed with Bipolar Disorder by Dr. B. He was not. Her diagnosis was reported as “R/O Bipolar Disorder” in that Bipolar Disorder has to be ruled out, but it had not been yet.

Dr. B’s report notes Applicant has cluster B personality traits. Although anecdotal, she did not note a specific personality disorder as disqualifying as required under AG ¶ 28(b). There were limited behavioral examples provided to help understand how Dr. B arrived at her conclusions. Dr. B relied on historical data without providing context or an opportunity for Applicant to provide insight into factors that contributed to conflicting information. It appears that she did not consider that there may be another side to the story. She failed to note the seriousness of the stressors he had while dealing with his ex-wife who was suffering from PTSD and alcohol issues and the loss of his stepdaughter. Applicant sought counseling and treatment to deal with his grief, which is exactly what is recommended. She noted that his PAI was mildly elevated but did not provide the actual T-score and the fact that there may be other reasons a score could be elevated.

The guideline also includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

- (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; and
- (e) there is no indication of a current problem.

Section 21 of the SF 86-Psychological and Emotional Health states:

The U.S. government recognizes the critical importance of mental health and advocates proactive management of mental health conditions to support the wellness and recovery of Federal employees and others. Everyday individuals with mental health conditions carry out their duties without presenting a security risk. While most individual with mental health conditions do not present security risks, there may be times when such a condition can affect a person's eligibility for a security clearance.

Individuals experience a range of reactions to traumatic events. For example, the death of a loved one, divorce, major injury, service in a military combat environment, sexual assault, domestic violence, or other difficult work-related, family, personal, or medical issues may lead to grief, depression, or other responses. The government recognizes that mental health counseling and treatment may provide important support for those who have experience such events, as well as for those with other mental health conditions. Nothing in this questionnaire is intended to discourage those who might benefit from such treatment from seeking it.

Mental health treatment and counseling, in and of itself, **is not a reason** to revoke or deny eligibility for access to classified information or holding a sensitive position, suitability or fitness to obtain or retain Federal or contract employment, or eligibility for physical or logical access to federally controlled facilities or information systems. Seeking or receiving mental health care for personal wellness and recovery may contribute favorably to decisions about your eligibility.

Applicant recognized and voluntarily sought mental health counseling when he and his first wife were having marital difficulties and they separated. He was the care provider for her daughter for four months, until unexpectedly the police took her away in November 2017. He experienced grief and depression. Although there are indications that he had suicidal ideations, I found him credible that he did not intend to commit suicide, but he was depressed. He continued in therapy and sought counseling and assistance from Dr. MC. They mutually decided he could discontinue therapy. He has shown great insight in seeking mental health counseling when he knew he needed it. He was understandably depressed. As noted by Dr. B in January 2022, his condition, major depressive disorder, is in remission.

It has been four years since Applicant's first wife passed away. He is happily married and looking forward to his future. In June 2023, LC administered assessments for anxiety and depression. His scores were nonsignificant in the "none-minimal" range. She also reviewed the DSM-5 criteria for Bipolar I, II, and Major Depressive Disorder. Of the three disorders, Applicant only "endorsed 1 symptom of Major Depressive Disorder (diminished ability to concentrate/think) and the diagnosis requires 5 or more symptoms to be endorsed." In LC's professional opinion, Applicant does not currently meet the criteria for Major Depressive Disorder or Bipolar I or Bipolar II Disorders. I have considered Dr. B's diagnosis. I find Dr. MC and Applicant's mutual agreement that he no

longer required therapy and LC's more recent evaluation and diagnosis as most probative. I find the above mitigating conditions apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. I find the following potentially applicable:

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

(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.

Applicant was arrested in August 2017 and July 2018 on charges of domestic violence. The charges were later dropped. In September 2018 and May 2019, Applicant's first wife filed a domestic violence restraining orders against him. The orders were later dropped. The above disqualifying conditions apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying trustworthiness concerns based on the facts:

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

Minimally these domestic violence charges were the result of mutual arguments, and the police were called and arrested Applicant. I found Applicant credible that the charges of domestic violence and a domestic violence restraining order were the result of his ex-wife attempting to gain leverage regarding their pending divorce. Her failure to appear on all of the charges raises questions about their validity. In any event, a significant period of time has elapsed, and it happened under unique circumstances that are unlikely to recur. AG ¶ 17(c) applies.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for drug involvement and substance misuse 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana three times over a weekend in January 2018. He purchased it in his state where it is legal. He held a security clearance at the time but did not have access to classified information. AG ¶¶ 25(a) and 25(c) apply. AG ¶ 25(f) does not apply because Applicant did not have access to classified information and insufficient evidence was provided to conclude he held a sensitive position at the time.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(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; and

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

Applicant voluntarily disclosed on his SF 86 that he purchased and used marijuana over a weekend in January 2018. He explained he used it because he hoped it would help him relieve stress from his marital issues. Marijuana is not illegal under state law in the state where he lived. He said he was unaware that it was a violation of federal law but admitted he should have known better. He acknowledged his mistake and took responsibility for his conduct. Applicant self-reported this conduct, and it is likely no one would ever have discovered it, had he not disclosed it, as required, on his SF 86. I believe this conduct was uncharacteristic of Applicant. It has been more than five years since it happened, it happened under unique circumstances, and it is unlikely to recur. He provided a signed statement of intent to abstain from future misuse of any illegal drug. I find the above mitigating conditions apply.

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 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.

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

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines I, H, and E in my whole-person analysis.

Applicant's commitment to ensuring his mental health is a priority is evident in his consistent awareness and voluntary treatment. He went through a difficult period, and he is now in a better place emotionally and mentally. He has the support of his new wife and his family. He has met his burden of persuasion. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under Guideline I, psychological conditions, Guideline E, personal conduct, and Guideline H, drug involvement and substance misuse.

Formal Findings

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

Paragraph 1, Guideline I:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge