



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



In the matter of:)
)
) ISCR Case No. 21-00109
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Dan Meyer, Esq.

07/24/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has a long history of polysubstance abuse and diagnoses of alcohol and substance abuse disorders. He made multiple false statements about his history during the security clearance process. The security concerns over his conduct and psychological conditions are ongoing and unmitigated. He did not provide sufficient information to mitigate the alleged security concerns under Guideline G (alcohol involvement), Guideline H (drug involvement), Guideline I (psychological conditions), or Guideline E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 6, 2018. On March 31, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guidelines G, H, I and E. The CAF issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

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

Applicant answered the SOR on February 8, 2022, and elected a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Tr. 9-10) The case was assigned to me on February 16, 2023. On March 17, 2023, following consultation with the parties, DOHA issued a notice scheduling the hearing for April 13, 2023, by video teleconference through an online platform.

The hearing convened as scheduled. Applicant represented himself during the hearing. During preliminary procedural matters, he indicated that he had read the “Pre-hearing Guidance Memo” issued by the DOHA Chief Judge, a memo that he received along with the hearing notice. The memo details his rights and responsibilities in the DOHA hearing process, including the right to legal counsel. Applicant knowingly elected to proceed *pro se*. (Tr. 5-7)

During the hearing, Department Counsel submitted Government’s Exhibits 1 through 9, all of which were admitted without objection. Department Counsel also requested that I take administrative notice of certain relevant excerpts from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) (Administrative Notice (AN) I), and I have done so. (Tr. 23-25)

Applicant testified but did not submit any exhibits during his case. At the end of the hearing, I held the record open, initially until May 1, 2023, to allow him the opportunity to submit post-hearing evidence.

At the close of the hearing, Department Counsel withdrew the cross-allegation at SOR ¶ 4.d. (Tr. 126-129))

On April 25, 2023, Applicant indicated that he had consulted legal counsel to assist him in post-hearing matters. He requested and received additional time to submit post-hearing exhibits. Without objection, I extended the post-hearing deadline until May 15, 2023. Applicant expressed his understanding that the hearing would not be reconvened. (Hearing Exhibit (HE) III)

On May 2, 2023, Applicant’s counsel entered appearance in the case. (HE IV) He subsequently submitted documents that are marked as Applicant’s Exhibits (AE) A through AE E and admitted without objection. AE A is the entry of appearance. AE B is a transcript excerpt from this case. AE C is a post-hearing declaration from Applicant. AE D is comprised of three statements from character witnesses. AE E is a Statement of Intent. Applicant’s counsel also submitted a post-hearing brief dated May 19, 2023, and various DOHA case excerpts. Department Counsel submitted comments in response, by e-mail on May 23, 2023. (HE V and VI). The record closed on May 23, 2023. DOHA received the hearing transcript (Tr.) on May 1, 2023.

Findings of Fact

In his Answer to the SOR, Applicant denied SOR ¶¶ 1.a – 1.d, mostly with explanations. He admitted SOR ¶¶ 2.a, 2.b, 3.a, 3.b, and 4.a-4.c, without comment. He did not answer the cross-allegations at SOR ¶¶ 3.c and 4.d. I construe those answers as denials. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He has never married and he has no children. He earned a high school diploma in 2012 and has taken some college courses. He has been employed by a federal contractor as an information technology (IT) specialist since August 2014. He testified that he has held a secret or interim secret clearance since 2014, though he asserted that he did not have actual access to classified information. He has held his current position as an IT team lead since May 2019. He has an annual salary of about \$96,000. He works on a military base. (GE 1; Tr. 12, 27-32, 61-65, 105)

In March 2013, Dr. S diagnosed Applicant with major depressive disorder and atypical depressive disorder. Dr. S's notes indicate that Applicant "has clinical depression; has not been on meds for several months, having anxiety attacks, sleep deprivation." He was brought for medical attention by his mother. (GE 9) He did not seek medical approval before ceasing his medication at the time. (Tr. 68-70)

GE 8 is comprised of treatment records for Applicant from Dr. M and Dr. J from September 2013 to January 2019. Applicant was diagnosed with generalized anxiety disorder and atypical depressive disorder. He acknowledged experiencing symptoms of depression and anxiety since age 12. (Tr. 65-67, 71-78, 80-81)

On or about September 27, 2017, Applicant then age 23, went to the emergency room (ER) of Hospital C complaining of depression and anxiety. He reported drinking alcohol and using cocaine as coping mechanisms, and that he had consumed a fifth of alcohol and used cocaine the night before. He reported intermittent thoughts of suicide (though not at that time) but has never had a plan. (GE 5 at 1-2; Tr. 83-85) He was admitted to the hospital due to "suicidal ideation" (i.e., thoughts of suicide). (GE 2 at 13) (SOR ¶ 1.a)

At Hospital C, Applicant was diagnosed with major depressive disorder, recurrent, moderate. (GE 2 at 15) He was discharged from Hospital C on October 2, 2017 and referred to Treatment Center P for inpatient substance abuse treatment. (GE 2 at 15; Tr. 83-85) (SOR ¶¶ 1.a, 1.b, 3.a) He was diagnosed at Treatment Center P with alcohol use disorder, severe; cocaine use disorder, severe; cannabis use disorder, severe, tobacco use disorder, mild; and major depressive disorder. (GE 6 at 2)

Treatment Center P records reflect that Applicant reported first using alcohol at 17. He was found to be severely dependent on alcohol, with daily reported use over the previous three years. He reported drinking a fifth of alcohol 20 of the previous 30 days, and using cocaine five of the previous 30 days, before his ER admission. He began

using marijuana at age 16 and used it for four years regularly. (GE 6 at 2; Tr. 79, 86-87) (SOR ¶¶ 2.a, 2.b) During his testimony, Applicant asserted that the frequency of his cocaine use, as reflected in GE 6, is inaccurate as he only recalled or acknowledged using cocaine twice. (Tr. 86-87) He denied marijuana use within 30 days of entering treatment. (Tr. 88; GE 6 at 2)

Applicant did not complete inpatient treatment at Treatment Center P. He left abruptly on October 14, 2017, reportedly because he did not want to be there anymore. His prognosis was poor due to his inability to successfully complete treatment. It was noted that he would benefit from readmission to residential treatment and involvement in a 12-step program. (GE 6 at 3; Tr. 89) (SOR ¶ 1.b) It was recommended that Applicant continue to abstain from alcohol and drugs; that he consider outpatient psychiatric treatment and behavioral counseling; attend Alcoholics Anonymous (AA), Narcotics Anonymous (NA) or other meetings daily; and submit to random urinalysis and breath analysis as directed. (GE 6 at 1) Applicant acknowledged that he has not done any of these things. (Tr. 90)

In December 2017, Applicant went to the ER at Hospital C due to insomnia and acute anxiety after running out of his medication, Wellbutrin. He was not admitted. (GE 2 at 3. GE 7; Tr. 95-97) (SOR ¶ 3.b) Afterwards, his mother wrote a letter to his primary care physician, Dr. J, about Applicant's anxiety. (GE 8 at 8-9; Tr. 97)

Applicant reported on his SCA that he had been treated for depression at Hospital C in about September 2017 and needed to get on the right medication. (GE 1 at 24-25; Tr. 83) He reported being treated for alcohol use at Treatment Center P from September to October 2017. (GE 1 at 27-28) He did not report any illegal drug use in the previous seven years; he reported no illegal drug involvement while in possession of a clearance; and he reported no drug treatment. (GE 1 at 26-27) (SOR ¶¶ 4.a, 4.b) He reported on his SCA that he had been previously granted a clearance by DOD but provided no details. (GE 1 at 28-29)

Applicant had background interviews relating to his SCA in September 2018, May 2019, and July 2019. In his first interview, he verified his reported hospitalization at Hospital C and said it was for depression. He also discussed his history of alcohol use. He said he had not been diagnosed as abusing alcohol or being alcohol dependent. He did not disclose any other issues of substance abuse. (GE 2 at 5; Tr. 90)

In Applicant's May 2019 interview, he said he was hospitalized at Hospital C for one week for medication maintenance after his primary care physician, Dr. J, changed his anti-depression medication. He said he was not hospitalized for any other condition. He discussed his substance abuse counseling at Treatment Center P, and his alcohol involvement and history at the time. He was asked if he had used illegal drugs in the past seven years, to include marijuana, and he said no. (GE 2 at 8-10; Tr. 83, 91-92) (SOR ¶ 4.c) He acknowledged at his hearing that his time at Treatment Center P would be considered drug counseling. (Tr. 92)

Applicant was interviewed a third time, in July 2019. He was confronted about his prior marijuana and cocaine use. He said he had used cocaine once in 2017, then said he used it once or twice between June 2011 and the present. (SOR ¶¶ 2.a, 2.b) (Tr. 60) He denied being a habitual user of cocaine and said his cocaine use was experimental. He said he used marijuana between 2008 and late 2011 about 10 times a year, with varying frequency. He used it to help him sleep and to cope with depression. He said he had not used marijuana since 2011 and had not used cocaine since 2017. He denied intentionally omitting his illegal drug use from his SCA. Earlier in the interview, he said he did not list his drug use because he believed it was not on record anywhere and was not a problem. (GE 2 at 10-11; Tr. 92-93) (SOR ¶ 4.c)

Applicant also disclosed that the real reason for his hospitalization at Hospital C in 2017 was for both medication maintenance and alcohol treatment. (GE 2 at 11-12) He authenticated the three interview summaries as accurate in a signed but undated interrogatory response. (GE 2)

In November 2020, Applicant participated in a psychological evaluation ordered by the DOD CAF related to his security clearance investigation. The evaluation was conducted by Dr. B, a Ph.D. licensed clinical psychologist. She reviewed medical records provided by the DOD CAF, as well as his SCA and background interview summaries. She also conducted a clinical interview, testing observations, and a personality assessment inventory (PAI). (GE 3 at 1-2, GE 4) (SOR ¶¶ 1.c, 3.c)

Applicant told Dr. B that he had always been a “casual” drinker and had never engaged in binge drinking. He drank more prior to his 2017 hospitalization and was mixing alcohol with his prescribed medications. He said he had reduced his drinking significantly since 2018, consuming a bottle of wine or a six-pack of beer a week. (GE 3 at 4) (SOR ¶ 1.d) He said he took Zoloft as needed and that he meets with his primary care doctor every three months for refills. (GE 3 at 3, 4)

With respect to drug use, Applicant told Dr. B that he stopped smoking marijuana at age 22. He acknowledged trying cocaine on “a couple of occasions in my past,” and said he had only used cocaine twice in 2018. (SOR ¶¶ 2.a, 2.b) He said his three-day hospitalization in 2017 was due to switching medications and was “just to be safe.” He did not disclose his 2017 substance abuse treatment at Center P or his subsequent ER visit in 2017. It was noted that records from 2019 indicated that he has a history of not being fully candid about his cocaine and marijuana use during interviews and in his case paperwork. (GE 3 at 4)

Dr. B found that Applicant acknowledged his history of depression and anxiety but tended to minimize his symptoms. He “severely downplayed his history of alcohol, cocaine, and marijuana use and he was not fully candid about his struggles with substances. His lack of candor “appears to be a pattern.” (GE 3 at 6)

Dr. B found Applicant’s lack of honesty regarding his history of substance abuse “particularly concerning” since he failed to complete his residential treatment program in 2017; he was given a poor prognosis by counselors; he failed to follow through on

discharge instructions; had not received mental health or substance abuse treatment since 2017 and continued to consume alcohol at a fairly high level. Dr. B found that Applicant's demonstrated lack of honesty impacted the credibility of his self-reporting about his prior drug use. His prognosis was "guarded, at best." (GE 3 at 6)

Dr. B. diagnosed Applicant with (1) major depressive disorder (moderate, recurrent) (DSM 296.32); (2) alcohol use disorder, severe (DSM 303.90); (3) cannabis disorder (severe) (DSM 304.30); and (4) stimulant use disorder (severe) (DSM 304.40). (GE 3 at 6) (SOR ¶ 1.c)

Dr. B. found that major depressive disorder tends to be a chronic and highly recurrent condition. Applicant has experienced symptoms since childhood. His tendency to self-medicate, coupled with ongoing alcohol use, inadequate treatment and, "perhaps most importantly, limited insight and transparency, point to a guarded prognosis. At this time, [Applicant's] diagnoses could pose a risk to his judgment, reliability, and trustworthiness concerning classified information." (GE 3 at 6) (SOR ¶ 1.c)

Applicant denied SOR ¶ 1.a, because he said he never had or expressed thoughts of suicide. (Tr. 33-34) He denied SOR ¶ 1.b because he said he abstained from alcohol for a year, and sought therapy, but the doctor he consulted in late 2017 did not carry his insurance. (Tr. 110) He did not pursue mental health treatment or counseling after that or during the COVID-19 pandemic and has not done so since then. (Tr. 110-111) He has consulted his primary care physician whom he has seen for many years. (Tr. 110-112) He is currently prescribed propranolol (anti-anxiety) and Zoloft (anti-depressant). (Answer; Tr. 34-39) He said he continues to experience "sundown syndrome" (the worsening of his anxiety or depression at night). (Tr. 97-98; GE 8 at 8) He denied mental health issues at work necessitating treatment. (Tr. 99)

Applicant acknowledged that before his 2017 treatment, his drinking had increased to four times a week, which he acknowledged was "binge drinking" and self-medication, where "one day would lead to the next day." (Tr. 42) He was consuming a bottle of wine or a fifth of liquor per occasion. (Tr. 45-47, 78) He said it "took a while" to realize what he was doing. He knows now that he cannot do that. This led him to self-refer, with some family assistance, to Hospital C in 2017 for treatment and "so I can get on the right medication." (Tr. 43)

Applicant said he left Treatment Center P because of anxiety and unfamiliarity with being around a lot of people. He said his departure did not relate to alcohol. He now sees that he should have completed the program. He recognizes that he was at "rock-bottom" at the time and does not want to feel that way again. (Tr. 44-45)

Applicant said he resumed drinking socially after about a year of sobriety in about 2018 or 2019 but consumed less alcohol. (Tr. 39-41) He said "I knew myself enough that, in a social capacity, I could be able to continue consuming alcohol." (Tr. 42) He did so unilaterally, "coming [to] a personal moment, trying to, you know, see how I do." (Tr. 100) He acknowledged that this was "probably not" recommended. He found it a "big step" that he could have one drink and then stop. (Tr. 101) Later, however, during the

COVID-19 pandemic, when he was at home teleworking full time, he on occasion consumed a whole bottle of wine or a 12-pack of beer at home at one sitting. "Every now and then throughout 2020 I did that," he said. (Tr. 102)

Applicant denied SOR ¶ 1.c, which asserts that he engages in ongoing severe substance abuse. (Answer; Tr. 47-48) He testified that he has made an "agreement" with himself to know his limits. He said he can go months without drinking. He continues to have one or two drinks on dates or social occasions. He last had a drink three weeks before the hearing, one or two drinks on a golf course, and then two months before that. He said he had not been intoxicated in a year or more, when he had "a couple glasses of mixed drinks" at his brother's birthday party. (Tr. 49-51, 100)

Applicant has never received a medical opinion that he could drink again. (Tr. 102) Since 2018, he has sought no mental health counseling, except from Dr. J, his primary care physician. He sees her every three to four months for medication refills and for primary care treatment. He said he has "for the most part" kept to his medication regimen since his 2017 treatment, though he has continued drinking on days he took his medication. He has not sought treatment in the ER since then. (Tr. 102-105)

Applicant has not participated in any drug or alcohol counseling or treatment since he left Treatment Center P. He has not participated in AA meetings. (Tr. 51-52, 112-113) He said he drinks alcohol less than once a week, and no longer consumes a bottle of wine or a six-pack of beer at one sitting, as he did in 2020, at the time of his DOD evaluation by Dr. B. (Tr. 99-100)

Applicant said he had not used marijuana since 2011 and had not used cocaine since 2017. He had a clearance in 2017 when he used cocaine. He used it twice, in social situations like at a bar. He acknowledged that cocaine and marijuana are illegal under federal law and inconsistent with holding a clearance. He believes he is subject to random drug testing at work. (Tr. 53-54, 88, 93-94, 105-107)

Applicant acknowledged that Dr. B's report shows he used cocaine twice in 2018, not 2017, but he thinks he may have meant 2017. (Tr. 107-108; GE 3 at 4) He also asserted that statements in Treatment Center P's records that he used cocaine starting at age 23 and used cocaine regularly for one year, including five of the past 3 days prior to September 26, 2017, were "not accurate." Similarly, he denied that he had used marijuana for four years regularly, asserting that he had not used marijuana since high school. (Tr. 108-109; GE 6 at 2) He was unable to explain why his testimony contradicted Dr. B's records. (Tr. 109-110)

As to Guideline E, Applicant testified that he first applied for a clearance at age 20, and he was young and did not get good advice from his company on how to fill out the SCA. He asserted that he did not disclose his 2011 marijuana use on his first SCA (in 2014) due to naivety and because it occurred in high school, before he turned 18. He graduated from high school in 2012. (Tr. 27-28, 55-59)

Applicant acknowledged that he did not disclose his 2017 cocaine use or his 2011 marijuana use on his 2018 SCA. (Tr. 54) He said he held a clearance at the time, granted sometime after 2014. (Tr. 57-58) He testified that he did not input any new information on his 2018 SCA. He was just told to “review this and just hit Okay.” (Tr. 27-28, 31) He did disclose his treatments at Hospital C and Treatment Center P in 2017, both of which were after his first SCA. (Tr. 32) He did not intend to mislead the government. (Tr. 32) He said he came clean because he was confronted by the interviewer, who had evidence of his cocaine use in his medical records. (Tr. 56-57, 59-60)

Applicant asserted that his future intention as to illegal drug use is “never to use.” He believes he is “well past the dependency for it and the self-medication.” He will continue drinking socially but will continue working on cutting back on his drinking. (Tr. 113-115) he said he always uses a ride-share service when he is out drinking and has never had a DUI or been pulled over by the police. (Tr. 113-115)

Applicant has worked at his DOD job for his whole career. He cannot change the past but can continue to work on improving himself. He has had no criminal issues or workplace issues. His personal issues have never affected his work life. (Tr. 28-30) He closed his testimony by stating that he has presented himself as best he can and has come a long way in the last eight years. He feels blessed to be where he is today. He loves his job and wants to continue his career. (Tr. 116-118)

After the hearing, Applicant retained counsel, and he submitted additional exhibits. In a post-hearing Declaration, he said he wished he had completed the program at Treatment Center P in 2017, but still learned from the experience. He reaffirmed that he had not used cocaine or marijuana since leaving the facility. He said that since his hearing, he has attended AA meetings. He did not see himself as “having a problem” in the past but now acknowledges that “any use is [too] much.” He has dealt with clinical depression and anxiety for most of his adult life and has taken them seriously. He has begun vetting therapists so he can pursue regular care and continue progressing. (AE C) Applicant submitted a signed statement of intent not to use illegal drugs in the future and acknowledged that any violation was grounds for automatic revocation of his clearance. (AE E)

Applicant submitted character letters from two longtime friends and from an executive with his employer. They attest that Applicant cares about his job, his family, his friends, and his career. He has worked hard to improve himself. He is very trustworthy personally and professionally. He is more mature and responsible than he was earlier in his career. He is reliable, trustworthy, and emotionally stable. He should retain his clearance. (AE D)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard

indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set forth in AG ¶ 21:
Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

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

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, or licensed clinical social worker) of alcohol use disorder;

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

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

Applicant has suffered from depression and anxiety since childhood. He has a long history of drug and alcohol abuse, including as coping mechanisms and for self-medication.

In September 2017, he went to the ER and was hospitalized due to suicidal ideation and depression. Records indicate that he reported drinking a fifth of alcohol on 20 of the previous 30 days and using cocaine five out of the previous 30 days. After several days of hospitalization, he was sent for inpatient substance-abuse treatment. He was diagnosed with major depressive disorder, severe; alcohol use disorder, severe; cocaine use disorder, severe, and cannabis use disorder, severe.

Applicant left Treatment Center P abruptly, in mid-October 2017, without completing treatment. He did not comply with the discharge recommendations that he abstain from alcohol (he resumed drinking after a year), did not attend counseling like AA or NA, and has not sought outpatient counseling or psychiatric care, other than from his longtime primary care physician. He resumed social drinking in about 2018 and engaged in frequent binge drinking and drinking to excess during the COVID-19 pandemic, a time when he (like many others) was working from home.

In November 2020, Applicant was evaluated by Dr. B, a licensed Ph.D. psychologist, as requested by the DOD CAF. Dr. B diagnosed him with major depressive disorder, moderate, recurrent; alcohol use disorder, severe; cannabis use disorder, severe; and stimulant use disorder, severe. He continues to consume alcohol socially contrary to treatment recommendations that he abstain. AG ¶¶ 22(c), 22(d), 22(e), and 22(f) all apply.

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

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

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified

consumption or abstinence in accordance with treatment recommendations;

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

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

Applicant has a long history of using alcohol (among other substances) as a coping mechanism and a self-medication tool for his chronic depression. He has been diagnosed with alcohol use disorder, severe. He abruptly left the inpatient treatment program in 2017. He abstained from alcohol for about a year after that but decided on his own to resume social drinking. During the COVID pandemic, when he was working from home, likely with few social outlets, he resumed binge drinking. He has never seriously pursued any recommended aftercare counseling or treatment program, or self-help program like AA to address his issues. His assertions about his current pattern of self-monitored social drinking are uncorroborated and are undercut significantly by his established history of false statements and lack of candor about his substance use, not only in the treatment and evaluation record, but during the security clearance process. Applicant noted in his post-hearing statement that he has begun AA and is in the beginning stages of pursuing counseling. While this is admirable, it is far too little and far too late to mitigate the security concerns about his alcohol involvement.

Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the trustworthiness concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are applicable:

(a) any substance misuse (see above definition);

(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; and

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

It is illegal under Federal law to manufacture, possess, or distribute certain drugs, including marijuana and cocaine. (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844) Applicant used marijuana between about 2008 to “at least” 2011. (SOR ¶ 2.a) During those years, he was in high school. He used cocaine in 2017. (SOR ¶ 2.b) AG ¶ 25(a) applies to both allegations.

No other drug-related conduct or condition is alleged in the SOR under Guideline H. Applicant was diagnosed in 2017 and 2020 with cannabis use disorder, severe; in 2017 with cocaine use disorder, severe; and in 2020 with stimulant use disorder, severe. AG ¶ 25(d) would apply had his diagnoses been alleged under Guideline H. Instead, they are addressed under Guideline I, discussed below. Nevertheless, they can be considered in weighing mitigation.

Applicant failed to complete the residential treatment program at Treatment Center P and quit the program abruptly in October 2017. AG ¶ 25(e) would also otherwise have been applicable here, but it was not alleged under Guideline H. Nevertheless, that fact can be considered in weighing mitigation.

Applicant testified that he held a clearance in 2017 when he used cocaine. It is not established that he had access to classified information, though he likely held a sensitive position at the time. However, his cleared status at the time was not alleged, so AG ¶ 25(f) does not apply.

I have considered the mitigating conditions under AG ¶ 26, including the following:

(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 is grounds for revocation of national trustworthiness 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.

Applicant's use of marijuana and cocaine is likely more extensive than alleged. He told Dr. B that he used marijuana until he was 22 (well after high school). Medical records indicate that he used cocaine on several occasions in 2017, not just the two instances in 2017 he acknowledged in his hearing, and also that he used marijuana regularly over a four-year period. Applicant's established instances of marijuana use and cocaine use are themselves rather dated. However, they also led to diagnoses of cannabis use disorder, severe (2017 and 2020); cocaine use disorder, severe (2017); and stimulant use disorder, severe (2020). Further, Applicant quit the substance treatment program in October 2017 and has not seriously pursued treatment or counseling since. Any mitigating effect of his purported abstinence is also severely undercut by Applicant's established lack of candor and false statements about his drug use, in the evaluative record and during the security clearance process. No disqualifying conditions apply.

Guideline I, Psychological Conditions

The security concern for psychological conditions is set forth in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

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

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

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

In 2017, Applicant was admitted for inpatient treatment at Hospital C and Treatment Center P and diagnosed with major depressive disorder, severe; alcohol use disorder, severe; cocaine use disorder, severe, and cannabis use disorder, severe. (SOR ¶ 3.a) In 2020, a licensed psychologist diagnosed Applicant with major depressive disorder, moderate, recurrent; alcohol use disorder, severe; cannabis use disorder, severe; and stimulant use disorder, severe. She found that these diagnoses “could pose a risk to his judgment, reliability, and trustworthiness concerning classified information.” (SOR ¶ 3.c) AG ¶¶ 28(b) and 28(c) apply.

Applicant left inpatient substance abuse treatment at Treatment Center P abruptly and unilaterally in October 2017, without completing the treatment program or any of the follow-up aftercare recommendations. AG ¶ 28(d) applies.

Applicant went to the ER in December 2017 during an acute episode of anxiety. He was not admitted. (SOR ¶ 3.b) While he has suffered from anxiety since childhood, and this episode likely resulted from his condition(s), the incident itself, which occurred over five years ago and which did not lead to further treatment either then or later, is not sufficient to establish a current security concern. No disqualifying conditions apply to SOR ¶ 3.b and it is found for Applicant.

Conditions that could mitigate security concerns over an applicant’s psychological conditions are provided under AG ¶ 29, as follows:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

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

Applicant has fairly recent diagnoses of major depressive disorder, moderate, recurrent; alcohol use disorder, severe; cannabis use disorder, severe; and stimulant use disorder, severe. Dr. B found that depressive disorder tends to be a chronic and a highly recurrent condition. Applicant has experienced symptoms since childhood. She found that his tendency to self-medicate, coupled with ongoing alcohol use, inadequate treatment and, “perhaps most importantly, limited insight and transparency, point to a guarded prognosis.” Applicant is not in treatment for any of his diagnosed conditions. He has not established that any Guideline I mitigating conditions should apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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

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

(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.

When Applicant submitted his SCA in June 2018, he failed to disclose any past illegal drug use in the previous seven years, specifically his use of marijuana at some point in the previous seven years (after June 2011) and his 2017 use of cocaine. He testified that he submitted his first SCA in 2014, and his clearance was granted later that year. By his own admission, his 2017 cocaine use occurred while he possessed a security clearance, something Applicant also did not disclose on his 2018 SCA. AG ¶ 16(a) applies to both SOR ¶¶ 4.a and 4.b.

After his 2018 SCA, Applicant had three background interviews. In his second interview, in May 2019, he was asked if he had used illegal drugs in the past seven

years, to include marijuana, and he said No. SOR ¶ 4.c alleges that this was a deliberately false statement. Applicant admitted SOR ¶ 4.c. AG ¶ 16(b) is established.

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

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

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

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

Applicant did not acknowledge his prior illegal drug use until the third interview, in July 2019, when he was confronted with evidence from his medical records. When confronted, he said he believed it was not on record anywhere and was not a problem. AG ¶ 17(a) does not apply. The DOD evaluator also specifically cited Applicant's lack of candor about his alcohol and illegal drug use as an ongoing concern. AG ¶¶ 17(c) and 17(d) do not 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

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

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

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

Applicant has yet to come to terms with the full extent of his psychological conditions or the security significance of his efforts to self-medicate with alcohol and illegal drugs. He also has an established history of minimizing his issues, in treatment, under evaluation, and in the security clearance process. Applicant did not mitigate the security concerns about his alcohol involvement, drug involvement and substance misuse, psychological conditions, or personal conduct. Eligibility for access to classified information is denied.

Formal Findings

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline I:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	Against Applicant
Paragraph 4: Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a-4.c:	Against Applicant
Subparagraph 4.d:	Withdrawn

Conclusion

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

Braden M. Murphy
Administrative Judge