



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



In the matter of: )  
)  
) ISCR Case No. 21-01017  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: Carl Marrone, Esq.

12/13/2023

**Decision**

HARVEY, Mark, Administrative Judge:

Guidelines I (psychological conditions) and G (alcohol consumption) security concerns are mitigated; however, Guideline E (personal conduct) security concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

On June 20, 2016, Applicant completed and signed a Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On February 18, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines I, G, and E. On June 22, 2022, the DOD CAF was renamed the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS).

On July 26, 2022, Applicant responded to the SOR, and he requested a hearing. (HE 3) On August 17, 2022, Department Counsel was ready to proceed. On April 12, 2023, the case was assigned to me. On May 15, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 27, 2023. (HE 1A) The initial hearing was held as scheduled. (Transcript 1 (Tr1.)) The hearing was continued to August 9, 2023, for additional witnesses. (AE 1B; Tr2.) Applicant's hearing was held in the vicinity of Arlington, Virginia using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered eight exhibits; Applicant offered 47 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr1. 10, 21-26; GE 1-GE 8; Applicant Exhibit (AE) A-AE UU)

Department Counsel requested administrative notice of the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (*DSM-5*), pages 160-168, 189-190, 222-230, 271-280, 490-497 for Alcohol Related Disorders, Anxiety Disorder, Post Traumatic Stress Disorder (PTSD), and Major Depressive Disorder. (Tr1. 23-24) Applicant did not object, and I granted the request. (HE 5) The record closed on September 8, 2023. (Tr2. 54) I admitted one post-hearing exhibit without objection. (AE VV)

I excluded some details to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a through 1.i, 2.a, and 2.b with explanations. (HE 3) He admitted in part and denied in whole or in part the allegations in SOR ¶¶ 1.j, 2.c, 2.d, 3.a, 3.b, and 3.c. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 53-year-old program management specialist for a company which provides equipment to the Army. (Tr1. 28, 101, 103; GE 1 at 5) He has held a security clearance since 1994. (Tr1. 28) In 1998, he received a bachelor's degree, and in 2002, he received a master's degree. (GE 1 at 11-12) In 2020, he was awarded a Ph.D. (Tr1. 99; GE 2 at 30)

Applicant enlisted in the Army in 1989 when he was 19 years old. (Tr1. 29) He served in the Army National Guard from 1990 to 2005 and in the Army Active Reserve from 2005 to 2016. (GE 1 at 17-18; GE 2 at 2-3) He received Active Duty for Special Work Support (ADSW) orders in support of several Army units. (Tr1. 30) He was commissioned as a second lieutenant in the Infantry in 1994. (Tr1. 30; GE 2 at 3) For the first three or

four years as an officer, he supported his state's counter-narcotics efforts, which involved his exposure to several difficult and potentially dangerous situations when law enforcement was arresting the offenders. (Tr1. 30-33) In 2004, he was deployed to Iraq for two months. (Tr1. 33) He had a follow-on deployment for five months to Egypt until March 2005. (Tr1. 33) While he was deployed to Egypt, terrorists used a vehicle borne improvised explosive device (VB IED) to damage a hotel, and several hotel occupants were killed. (Tr1. 36) Applicant assisted the victims of the attack. (Tr1. 36)

When Applicant was deployed to Afghanistan, his driver and gunner were killed by an IED. (Tr1. 37-40; GE 1 at 15) Applicant received some shrapnel in his back, and he was evacuated to the United States. (Tr1. 38-40) He had back surgery, and he was hospitalized for several months. (Tr1. 38) He was diagnosed with Traumatic Brain Injury (TBI), and in 2007, he received a Purple Heart Medal for injuries received in the explosion. (Tr1. 40; AE F; GE 2 at 63)

From 2009 to 2011, Applicant was deployed to Iraq. (Tr1. 41; GE 1 at 15) He was responsible for training Iraqis on traffic control points. (Tr1. 42-43) He was traumatized by the effects of his order to shoot at a vehicle, which caused the death of a girl's father and two other men. (Tr1. 45; GE 5 at 11) The vehicle contained firearms; however, the girl inside the vehicle witnessed the death of her father. (Tr1. 45) The girl was distraught but not physically harmed. (Tr1. 45) After the incident, he was transferred to Baghdad where he worked in resource management. (Tr1. 46)

Applicant went to Tajikistan to assist the Tajiks with drug interdiction. (Tr1. 46-47) He was robbed, beaten, and left unconscious in the woods. (Tr1. 47) He woke up after about seven hours in the woods, and he walked back to his hotel. (Tr1. 48) He had a concussion and some facial injuries. (Tr1. 48) He received several professional certifications. (AE OO-AE QQ) His resume provides further details about his professional background. (AE MM)

In 2010, Applicant received a "Twenty Year Letter," which notified him that he had sufficient qualifying reserve service to retire from the Army. (GE 2 at 34; AE W) He retired from the Army in 2020. (Tr1. 93) He received a 90 percent disability rating from the Department of Veterans Affairs (VA) with 70 percent disability for PTSD. (GE 2 at 2; AE G; AE P at 6)

Applicant was married the first time from 1989 to 1992. (Tr1. 100) He was married the second time from 1992 to 2015. (Tr1. 101) His three children are ages 14, 16, and 19. (Tr1. 101) He met his fiancé in November 2022. (Tr1. 95) They attend church together. (Tr1. 96) They volunteer in their community. (Tr1. 97) His fiancé is an important stabilizing force in his life. (Tr1. 96)

## **Psychological Conditions and Alcohol Consumption**

SOR ¶ 1.a alleges that in about November 2006, Applicant was diagnosed with PTSD, Depression, Anxiety, and Alcohol Dependence. He received alcohol detoxification

from a clinic. In 2002, he drank excessively when his first marriage ended. (Tr1. 105, 108; GE 5 at 11) He was feeling nervous and anxious after his deployment to Egypt, and he decided to discuss it with a mental-health counselor. (Tr1. 64-65, 103) He was diagnosed with PTSD. (Tr1. 63) He was prescribed Wellbutrin, an antidepressant, Decampere, anti-alcohol, and Trazodone to help him sleep. (Tr1. 65-66) He also received psychotherapy for three to ten days. (Tr1. 66) He frequently attended Alcoholics Anonymous (AA) meetings in the 2004 to 2006 timeframe. (Tr1. 67, 105, 109) Both of his parents were alcoholics, and he indicated he may have a genetic predisposition towards alcoholism. (Tr1. 104) After each alcohol treatment, he was “pretty much [told] don’t drink alcohol, go to [AA] meetings.” (Tr1. 109)

SOR ¶ 1.b alleges that in about 2012, Applicant completed alcohol-related treatment, and in 2013, he relapsed. He attended some group meetings at a clinic and some AA meetings. (Tr1. 68) He believed the treatment he was receiving was ineffective and a waste of time. (Tr1. 69, 118) His marriage fell apart, and he lost his job. (Tr1. 69-70, 119) These factors contributed to his relapse. (Tr1. 69) He used alcohol to self-medicate. (Tr1. 70)

SOR ¶ 1.c alleges that in about October 2013, Applicant received alcohol-related treatment and completed detoxification at a clinic. The alcohol-related treatment was on an outpatient basis, and he went every couple of weeks. (Tr1. 71, 120) He went to the treatment primarily for medication management. (Tr1. 71) An April 23, 2014 VA progress note states that Appellant said he had a relapse in October 2013. (GE 5 at 11) “The incident led his employer to require him to complete an alcohol rehabilitation program prior to returning to work. He completed [a program] and is currently active in Alcoholics Anonymous.” (*Id.*) The note does not describe “the incident.” The April 23, 2014 VA progress note states Applicant had consumed alcohol before his VA appointment and Applicant believed it was unsafe for him to drive home in his vehicle. (*Id.* at 16) The VA called a cab, which took him from the VA to his residence. (*Id.*)

SOR ¶ 1.d alleges that from November 20 to 25, 2013, Applicant received alcohol-related inpatient treatment from a clinic, and he was diagnosed with Alcohol Use Disorder (moderate, in early remission), Major Depressive Disorder, and Cluster B personality traits. Applicant agreed with the summary in SOR ¶ 1.d. (Tr1. 73, 121; SOR response) The therapy at the clinic entailed attending classes and AA meetings. (Tr1. 74) He indicated that he was sober for two years in November 2013. (Tr1. 121; AE M (check cite)) A VA progress note states that Applicant had a significant relapse in October 2013, and “The incident led his employer to require him to complete an alcohol rehabilitation program prior to returning to work.” (AE H at 3 (VA page 22)) The VA record said that Applicant said:

He was required to go to alcohol rehabilitation in October 2013, in order to keep his job, and he returned [to work] in January 2014. . . . The veteran denied any legal problems or significant behavioral disturbances other than his excessive drinking that led his employer to require that he complete an

alcohol rehabilitation program in October 2013 in order to keep his job. (AE H at 2-3 (VA pages 21-22))

Applicant denied that his employer required him to attend alcohol rehabilitation to retain his employment. (Tr1. 147-148) After he was confronted with the progress note, he said, "Yes, and I don't, I don't know where that's coming from. It says [he] had to go to alcohol rehab in order to keep his job. I don't recall that. I don't know where that's from." (Tr1. 150) He denied that he ever lost his job due to drinking. (Tr1. 122) He said, "I didn't lose my job. I never, I never lost my job." (Tr. 122-123) He said he lost his job because the contract ended and was not rebid. (Tr1. 123)

SOR ¶ 1.e alleges that from November 25, 2013, to about January 1, 2014, Applicant received 37 days of residential treatment for Anxiety, PTSD, and Depression at a clinic. Applicant agreed with the summary in SOR ¶ 1.e. (Tr1. 74; SOR response) He successfully completed the treatment program. (Tr1. 123)

SOR ¶ 1.f alleges that from about January 10, 2014, to about January 14, 2014, Applicant received Alcohol Detox treatment at a VA medical center. He did not recall whether he had a relapse after leaving the clinic on January 1, 2014. (Tr1. 75) He did not remember whether there was a triggering event for his relapse. (Tr1. 123) The treatment in January 2014 may have been for aftercare rather than detox. (Tr1. 75)

SOR ¶ 1.g alleges that from about March 3, 2014, to about May 2014, Applicant received treatment at a VA hospital for PTSD, Major Depressive Disorder (Recurring with Moderate Severity), Alcohol Use Disorder (Severe), and Mild Neurocognitive Disorder related to TBI. Applicant sought treatment at the VA hospital because "everything kind of started falling apart." (Tr1. 76) He remembered being at the VA hospital; however, he could not remember too much about what occurred there. (Tr1. 77) VA treatment records for May 2014 indicate he was drinking 12-18 beers a day. (GE 5 at 15-16; AE P at 7) He had attended rehabilitation for alcohol on five previous occasions. (AE P at 7) Before his 11 am appointment on May 8, 2014, he had consumed three beers. (GE 5 at 16; AE P at 12)

On August 23, 2014, Applicant's insurance company called the police and informed them that Applicant was at his residence; he was suffering from alcohol poisoning; and the caller requested a welfare check. (GE 3 at 31-32) The police entered his residence and observed garbage, beer cans, and fecal matter strewn about his residence. (*Id.*) Applicant was transported to a VA medical center. (*Id.*) This incident is not listed in the SOR, and it will not be considered for disqualification purposes.

SOR ¶ 1.h alleges that from about December 16, 2014, to about December 24, 2017, Applicant received treatment from the VA for Alcohol Use Disorder, and he received alcohol detoxification. He failed to follow treatment advice to refrain from alcohol use.

SOR ¶ 1.i alleges that from about February 2017 to about May 2017, Applicant received inpatient hospitalization at a VA hospital for PTSD. Applicant believed the

treatment he received in 2017 was the most effective. (Tr1. 77-78) The facility focused on PTSD and mindfulness. (Tr1. 78) He also received medication management. (Tr1. 78) He attended AA meetings at night. (Tr1. 78) He finally accepted that he was an alcoholic and he needed to take sobriety one day at a time. (Tr1. 79, 98) A March 29, 2017, VA Disability Benefits Questionnaire states, "Alcohol is drug of choice. Became a problem in 2005 when he returned from Egypt. Has had periods of abstinence over the years: one [to] three years but a lot of roller coaster. Currently has been abstinent since 2 January 2017." (AE Q at 98)

SOR ¶ 1.j alleges that on March 18, 2021, a licensed psychologist, Dr. B, evaluated Applicant's mental health at the request of security officials. Dr. B diagnosed Applicant with PTSD, Major Depressive Disorder (Moderate, Recurrent), Generalized Anxiety Disorder, and Alcohol Use Disorder (Severe). (GE 4 at 7) Dr. B is a clinical psychologist. (GE 4 at 7) Applicant said he remembered taking a test on-line; however, he did not remember Dr. B's interview of him. (Tr1. 80-81) He said he was "a little guarded" during the interview because he "didn't know what this was about" and, he "didn't know that [he] had to fight to keep [his] clearance again." (Tr1. 81) He denied that he lied to Dr. B. (Tr1. 82) Dr. B noted that Applicant told another evaluator that in 2016 his last drink was in 2016; however, he told Dr. B that his last drink was in 2014. (Tr1. 82) Applicant said he did not "recall that." (Tr1. 82) He was upset when he read Dr. B's report because of the comments about his lack of candor. (Tr1. 153-154)

Dr. B noted that Applicant "maintained the belief that he had a brief bout of substance abuse treatment at the VA in 2014 and that he has been sober ever since." (GE 4 at 6) He relapsed after 2014. (*Id.*) He omitted disclosure of alcohol-related treatment from February to May 2017 at a VA facility. (*Id.* at 4, 6) She indicated Applicant "has a history of underreporting and withholding information. His tendency to omit pertinent details of his behavioral health history may have [led] previous evaluators to formulate inaccurate conclusions." (*Id.*) Dr. B concluded that it would be imprudent to grant Applicant access to classified information, and stated:

[Applicant] is clearly a troubled man who has been using alcohol to cope with severe mental health symptoms for many years. While his history of inpatient care and multiple responses is problematic, his poor insight and candor issues are of greatest concern. The degree to which he withheld information throughout the security vetting process (2016 to present) was indicative of intentional concealment, which brings his overall credibility into question. (GE 4 at 7)

At his hearing, Applicant said his last drink of alcohol was on November 3, 2017, and he has been sober for almost six years. (Tr1. 82, 89) He remembered the date because he had completed Step Four with his sponsor. (Tr1. 79, 83) He listed the dates, times, and group names for his attendance at AA meetings in June and July 2021. (GE 2 at 74) He speaks to his AA sponsor about every day. (Tr1. 83) His sponsor did not want to be involved in Applicant's security clearance hearing because he had some issues with law enforcement, and AA is anonymous. (Tr1. 83)

Applicant attends AA meetings three or four days a week. (Tr1. 90) He contacts his sponsor if he has a craving for alcohol. (Tr1. 91) He has a stable home life, and he is more mature. (Tr1. 90) He joined a church a few months before his hearing. (Tr1. 93) His PTSD is less significant in his life now that he has retired from the Army. (Tr1. 93) He regularly sees a VA counselor, and he plans to call the VA crisis line if his PTSD is becoming difficult for him to control. (Tr1. 94) He has the tools to maintain his sobriety. (Tr1. 90)

SOR ¶ 2.a alleges from about 2002 to at least 2017, Applicant consumed alcohol to excess and to the point of intoxication. Applicant said he began drinking heavily in 2003 or 2004. (Tr1. 50) Before he deployed, he drank as “a way to cope.” (Tr1. 51) After his deployment, he drank as a way to self-medicate. (Tr1. 51) Alcohol helped him to relax. (Tr1. 51) After he returned from Egypt, his drinking increased. (Tr1. 52) He said he stopped drinking alcohol in 2017. (Tr1. 53) He received assistance from AA. (Tr1. 53-54) Between 2014 and 2017, he did “not consciously” consume excessive amounts of alcohol. (Tr1. 132) After 2017, he went to AA meetings. (Tr1. 133)

SOR ¶ 2.b alleges in about September 30, 2014, Applicant was arrested and charged with driving under the influence of alcohol (DUI). Applicant bumped a parked vehicle when he was parking his vehicle. (Tr1. 56, 127-130; GE 3 at 23) The damage to the other vehicle was not extensive, and no one was injured. (Tr1. 58-59) The police arrived, and Applicant failed a field sobriety test. (Tr1. 56; GE 3 at 27) Applicant’s breathalyzer result was .085. (Tr1. 57, 128; GE 3 at 28) He was arrested for reckless driving and Operating Motor Vehicle Under the Influence (DUI). (GE 3 at 26, 28) At his security clearance hearing he said unaware when he was charged that he was charged with DUI. (Tr1. 130) He pleaded guilty to, and he was convicted of, reckless driving. (Tr1. 58) He was not prosecuted for DUI. (Tr1. 59)

SOR ¶ 2.c alleges in about October 2014, Applicant was arrested and charged with DUI. Applicant hit the back corner of an unoccupied vehicle, which was parked near his residence. (Tr1. 59, 62; GE 3 at 8) Applicant drove a short distance away and parked his vehicle at his residence. (*Id.*) The same police officer who was involved in his September 2014 DUI arrest arrived and assumed he had been drinking. (Tr1. 60; GE 3 at 14) Applicant had not consumed any alcohol prior to the accident. (Tr1. 62) The police searched his vehicle and found a BB or pellet imitation firearm in the back of his vehicle. (Tr1. 60, 131; GE 3 at 11, 12) His breathalyzer result was 0.00. (Tr1. 62; GE 3 at 14) He also provided a urine sample for testing. (GE 3 at 12, 15, 17) Applicant denied that he was aware that he was being arrested for DUI. (Tr1. 131) Applicant was charged with Unlawful Possession of an Imitation Firearm, Leaving the Scene of an Accident, Operating a Motor Vehicle Under the Influence; and Operating an Unregistered Vehicle. (GE 3 at 11) He believed he was arrested for possession of an illegal firearm. (Tr1. 131) He found out he was charged with DUI and possession of an illegal firearm when the charges were sent. (Tr1. 62, 132) He was convicted of reckless driving, and he received a \$158 fine. (Tr1. 60)

SOR ¶ 2.d cross alleges under the alcohol consumption guideline, the information in SOR ¶¶ 1.a through 1.j, which are alleged under the psychological conditions guideline.

Applicant denied that he had ever been terminated from his employment because of drinking. (Tr1. 139) However, a May 8, 2014 progress note states “Veteran called directly [his] case manager reporting to have recently been fired from his job and abuses alcohol drinking 12-18 beers a day.” (Tr1. 140; GE 5 at 16) At his hearing, he said he did not “recall ever saying” that he had been fired. (Tr1. 141) He suggested his memory in 2014 may have been affected by his alcohol consumption and TBI. (Tr1. 142) However, he did not believe his TBI affected his ability to perform his job today. (Tr1. 142)

### **Dr. G’s Evaluation**

Dr. G is a VA clinical psychologist. On July 27, 2021, Dr. G said Applicant has been receiving VA treatment at his location since 2019. (GE 2 at 72) Dr. G diagnosed Applicant with PTSD and Alcohol Abuse in Sustained Remission. (GE 2 at 72) Dr. G summarized his current treatment and prognosis as follows:

He . . . engaged in individual therapy from July 2019 to November 2020. Individual therapy was discontinued because he had successfully met all of his individual therapy treatment goals and had successfully developed an ongoing recovery plan. He currently continues to be seen for medication management, through our clinic. He has been an active participant in treatment and compliant with treatment recommendations. In regards to his treatment goals, he has made significant progress in obtaining his goals and is currently maintaining those gains. (GE 2 at 72)

### **Dr. W’s Evaluation**

On July 20, 2023, Dr. W provided an evaluation of Applicant’s mental health. (AE TT) Dr. W is a clinical psychologist who focuses on treatment of PTSD. (Tr1. 156, 163) She did not review Applicant’s medical records because she did not have time. (Tr1. 164) She reviewed Dr. B’s report, and she discussed Dr. B’s report with Applicant. (Tr1. 164-165) Applicant had 26 sessions with Dr. W over the previous 5 ½ months. (*Id.*) She diagnosed him with PTSD. (Tr1. 157-158; AE TT) She said he is dedicated to attendance at AA meetings. (Tr1. 159) She does not believe Applicant has consumed alcohol in the last six months. (Tr1. 159) She concurred with Dr. G, that Applicant’s “alcoholism is in remission and that he has met all [of] his treatment goals and objectives.” (AE TT)

Dr. W opined that Applicant was being honest with her about his symptoms and mental-health history. (Tr1. 160) Applicant has memory issues from his PTSD. (Tr1. 166) His prognosis is good. (Tr1. 160) In response to Applicant’s question about recommendations to ensure he does not relapse or his PTSD manifest does not itself in a negative way, Dr. W said he should receive psychotherapy to help with the traumatic events he experienced in childhood and during his military service. (Tr1. 161) In her report Dr. W said:



The prognosis for [Applicant] is very good, given his willingness and ability to comply with continued aftercare. Recovery of symptoms is possible. Outcomes for him are improved with continued coping skills and symptom awareness and management.

[Applicant] does not have any condition that calls his trustworthiness, judgment, or reliability into question. I believe [Applicant] has been honest with me about his issues. We discussed in detail his past alcohol abuse. He appears to be a stable and well-adjusted individual, given the PTSD, Anxiety, and Depression that he has suffered in the past. Other than PTSD, he does not exhibit other symptoms. (AE TT at 3)

### **Mr. B's Comments**

Mr. B is a VA outpatient clinical psychiatric mental health nurse practitioner. (AE VV) On July 5, 2023, Mr. B said, "To date, [Applicant] has been actively engaged in his outlined treatment plan. He [is] compliant with medications and with all requests outlined by this provider." (AE VV) Mr. B did not provide a diagnosis or a prognosis.

### **Personal Conduct**

SOR ¶¶ 3.a, 3.b, and 3.c allege Applicant falsified material facts on his June 20, 2016 SCA when he answered, "No," to the following questions.

(1) "Section 24-Use of Alcohol Sought Counseling or Treatment Have you EVER voluntarily sought counseling or treatment as a result of your use of alcohol?" He failed to disclose the information in SOR ¶¶ 1.a through 1.h. (GE 1 at 35) In the Optional Comment section he said, "I attend AA meetings regularly. Spoke with a VA psychiatrist in 2011 regarding alcohol use related to PTSD issues." (Tr1. 136; GE 1 at 35)

(2) and (3) "Section 22-Police Record-Summary In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court?" Applicant disclosed the October 2014 vehicle accident and arrest for possession of an imitation firearm. (GE 1 at 31) He said the offense was downgraded to "Petty Disorderly Persons Offense," and he received a \$158 fine. (GE 1 at 31-32) He did not disclose the DUI charges.

Applicant's 2016 SCA also asked, "In the last seven years has your use of alcohol had a negative impact on your work performance. . . or resulted in intervention by law enforcement/public safety personnel?" He said, "No." (GE 1 at 35) It asked, "Have you EVER received counseling or treatment as a result of your use of alcohol in addition to what you have already listed on this form?" Applicant said, "No," and in the Optional Comment section said, "I attend AA meetings regularly." (GE 1 at 35)

Applicant had previously completed SCAs during his Army career. (Tr1. 86) He said when he was completing his 2016 SCA he did not remember all of the places he attended for alcohol treatment or when he received treatment at the facilities. (Tr1. 84)

He said no because he did not want to provide the additional specific information which would have been required to complete the SCA. (Tr1. 135-136) He expected he would be meeting with an investigator in about 30 days, and he planned to disclose his alcohol treatment to the investigator. (Tr1. 84, 144) No one ever told him that it was okay to omit information on the SCA and provide the information later to an investigator. (Tr1. 145)

Applicant believed when he was completing the SCA, if he answered, yes, then he would not be able to proceed on the form without providing specific information. (Tr1. 85) Also, the form cannot be saved, and an applicant must restart the form if it is not completed. (Tr1. 85) However, he repeatedly indicated on his SCA "estimated" for dates, (GE 1 at 9-13, 17-18, 21-26), and in other locations, he utilized the "Optional Comment" function to indicate "I do not have this information" or "I do not know place of birth information." (GE 1 at 22)

Applicant denied that he was trying to hide or deceive security. (Tr1. 85, 87) He signed a consent form or waiver to allow the investigator to obtain his treatment records. (Tr1. 87) He said he disclosed the information missing from his SCA to the investigator. (Tr1. 85) He said he thought he wrote on the form that he had alcohol issues, and he would explain it to the investigator later. (Tr1. 145-146) He did not have any draft SCA forms. (Tr1. 146) He did not remember ever being referred for alcohol counseling. (Tr1. 146-147) However, a treatment note indicates he was referred for alcohol treatment or counseling. (Tr1. 147; AE H at 21) He said the treatment note was accurate except for the part about having to go to alcohol treatment to keep his job. (Tr1. 150)

According to Applicant's August 8, 2016 OPM personal subject interview (PSI), he initially told the investigator that he stopped consuming alcohol in late 2014; however, he said he most recently drank a beer in June 2016. (GE 2 at 18) He was asked three times to disclose additional alcohol-related treatments, and he denied additional treatments. (Tr1. 137-138; GE 2 at 18) Then the investigator would name a particular treatment entity, and Applicant would admit receiving alcohol-related treatment at that facility. (Tr1. 138; GE 2 at 18) He attributed his failure to disclose the treatments until the investigator confronted him with the facts to his lack of recollection or inability to remember or alternatively to oversight and not having the details available to him at the time he was completing his SCA. (Tr1. 139; GE 2 at 18, 21)

Applicant did not disclose his DUI offense because he was only convicted of reckless driving. (Tr1. 87) He said, "Maybe I read the question wrong and just thought charge meant the same thing as conviction. Are you a lawyer? No, I'm not." (Tr1. 88) He is aware that there would be police reports and court records, and those records would be available to investigators. (Tr1. 89)

In his August 17, 2016 OPM PSI, Applicant disclosed the details of his two arrests in September to October 2014 without being confronted with the facts. (GE 2 at 17) He said he did not list the September 2014 arrest and the DUI component of the October 2014 arrest on his SCA due to oversight. (GE 2 at 17)

Applicant told Dr. B or the OPM investigator or both that he was sober from 2006 to 2011. (Tr1. 113; GE 2 at 17; GE 4 at 4) In March 2011, he returned from Iraq, locked himself into a hotel room and drank 12 six packs of beer over several days. (Tr1. 114; GE 2 at 17-18; GE 5 at 11) He described himself as “a chronic relapse” from 2004 to 2011. (Tr1. 115) He did not actually get sober until 2017. (Tr1. 117)

Applicant said he could not afford to pay his mortgage in 2014. (Tr1. 125) Applicant said his mortgage company foreclosed on his residence. (Tr1. 125) Department Counsel raised the issue of Applicant’s failure to disclose the foreclosure of his residence on his 2016 SCA. (Tr1. 126) Applicant responded that the foreclosure was not in 2016; however, he did not remember when it occurred. (Tr1. 127) A December 16, 2014 progress note states that Applicant is unable to pay his mortgage and his house is in foreclosure. (GE 6 at 12, 23) In Section 26-Financial Record of his SCA, Applicant disclosed his delinquent child support debt, and in the Optional Comment section he said, “My wife and I separated in 2011. Our divorce was final in 2014. In 2014, I faced numerous financial difficulties resulting from loss of income. I am currently rectifying many of those issues.” (GE 1 at 39) Applicant disclosed sufficient information on his SCA about “financial difficulties” to mitigate concerns about his foreclosure not being listed on his SCA. The foreclosure will not be further discussed in this decision.

In the additional comments at the end of his SCA, Applicant said:

Regarding Alcohol Treatment: In 2004, I entered Alcoholics Anonymous for the first time, and have been going to these meeting ever since. Please note that I have never been reprimanded, nor fired from any employment regarding my previous alcohol use. I am currently a lieutenant colonel in the United States Army Reserve and have never received any sort of punitive action during my tenure (1989-Present), nor have I violated my responsibilities in maintaining my security clearance-now over 25 years holding a security clearance. I am a trustworthy and reliable candidate. (GE 1 at 41)

### **Character Evidence**

Applicant’s fiancé is a nurse and case manager with 32 years of medical experience. (Tr2. 6) She has known Applicant since November 2022, and he does not consume alcohol. (Tr2. 7) He disclosed he had been to alcohol rehabilitation, and he does not drink. (Tr2. 8) They are together five days a week, and she has not seen any signs of alcohol consumption. (Tr2. 9) She was previously married to an alcoholic, and if he resumed his alcohol consumption, she would end their engagement. (Tr2. 10) He is a good neighbor, member of their church, and father. (Tr2. 10) He has a good reputation as an employee. (Tr2. 17) He is professional, intelligent, popular, compassionate, trustworthy, and caring. (Tr2. 11, 18) He is conscientious about taking his medication for his PTSD, and to help his sleep. (Tr2. 12)

A coworker who has known Applicant for three years described him as very reliable, forthright, friendly, dependable, and trustworthy. (Tr2. 22-24, 27) He has a wonderful reputation as an employee. (Tr2. 24) There has not been any indication that he has been consuming alcohol. (Tr2. 25) He has a very good memory. (Tr2. 25)

Applicant's neighbor for 10 years lauded Applicant's contributions to the national defense and described his numerous attendances at AA meetings. (GE 2 at 83-84) He recommended reinstatement of Applicant's security clearance.

Applicant received excellent performance evaluations and officer evaluation reports. (GE 2 at 87-113; AE II; AE NN) He successfully completed multiple challenging training courses while in the Army, including Airborne, Ranger, Air Assault, and Pathfinder. (GE 2 at 37-44) He was awarded numerous medals and ribbons including: Bronze Star Medal-2; Purple Heart-1; Defense Meritorious Service Medal-1; Meritorious Service Medal-2; Army Commendation Medal-2; Army Achievement Medal-5; Air Force Achievement Medal-1; Army Reserve Components Achievement Medal-1; National Defense Service Medal-2; Global War on Terrorism Expeditionary Medal-1; Global War on Terrorism Service Medal-1; Humanitarian Service Medal-1; Iraq Campaign Medal w/ Campaign Star; Noncommissioned Officer Professional Development Ribbon-1; Army Service Ribbon-1; Overseas Service Ribbon-2; Army Reserve Component Overseas Training Ribbon; Armed Forces Reserve Medal w/ M Device; NATO Medal-1; Multinational Force and Observers Medal; Combat Infantryman Badge; Expert Infantryman Badge; Kuwait Liberation Medal; and Drill Sergeant Identification Badge. (GE 2 at 37-38; AE X-AE HH)

Applicant provided a heartfelt and sincere closing statement:

Alcohol, and my recovery from it, has been brought up and it's probably going to be further brought up. You know, unfortunately for me, the subject of alcoholism and my past issues [were] not high points in my life.

The toughest issue I had to experience was acceptance. And just basically being able to finally admit to myself and say in an AA meeting. Hello my name is [Applicant] and I'm an alcoholic.

I've since retired from military service, but I continue to support the Army in my current employment. I'm very proud of my military service. But I'm also very proud of the work that I'm currently doing as a Government employee. I am a devoted patriot. I've spent my entire life working and supporting this country. And I do love this country deeply. I am very hopeful, I'm hopeful for a future where I can continue to contribute and continue to work in a role that I love. I hope that you will take that in consideration. Thank you. (Tr1. 98)

## 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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s 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.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. 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 it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it

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

## **Analysis**

### **Alcohol Consumption and Psychological Conditions**

AG ¶ 21 states the security concern for alcohol consumption:

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

AG ¶ 27 articulates the security concern for psychological conditions:

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.

AG ¶ 22 provides alcohol consumption conditions that could raise a security concern and may be disqualifying in this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(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.

AG ¶ 28 provides psychological conditions that could raise a security concern and may be disqualifying in this case:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

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

(c) voluntary or involuntary inpatient hospitalization; and

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

The record establishes AG ¶¶ 22(a), 22(c), 22(d), 22(e), 22(f), 28(a), 28(b), 28(c), and 28(d). Further details will be discussed in the mitigation analysis, *infra*.

Four alcohol consumption mitigating conditions under AG ¶ 23 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.

Five psychological mitigating conditions under AG ¶ 29 are potentially applicable:

(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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

### **Disqualifying Conditions**

Dr. B, diagnosed Applicant with PTSD, Major Depressive Disorder (Moderate, Recurrent), Generalized Anxiety Disorder, and Alcohol Use Disorder (Severe). He received inpatient alcohol, PTSD treatment, or detoxification or combinations of these



treatments on multiple occasions. When Applicant was in various alcohol aftercare programs, the treatment providers recommended that he maintain sobriety. He repeatedly failed to adhere to this recommendation and relapsed. Dr. B concluded that it would be imprudent to grant Applicant access to classified information, and stated:

[Applicant] is clearly a troubled man who has been using alcohol to cope with severe mental health symptoms for many years. While his history of inpatient care and multiple responses is problematic, his poor insight and candor issues are of greatest concern. The degree to which he withheld information throughout the security vetting process (2016 to present) was indicative of intentional concealment, which brings his overall credibility into question. (GE 4 at 7)

*DSM-5* lists 11 criteria to diagnose alcohol use disorder:

A. A problematic pattern of alcohol use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:

1. Alcohol is often taken in larger amounts or over a longer period than was intended.
2. There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
3. A great deal of time is spent in activities necessary to obtain alcohol, use alcohol, or recover from its effects.
4. Craving, or a strong desire or urge to use alcohol.
5. Recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol.
7. Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
8. Recurrent alcohol use in situations in which it is physically hazardous.
9. Alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by alcohol.
10. Tolerance, as defined by either of the following:
  - a. A need for markedly increased amounts of alcohol to achieve intoxication or desired effect.
  - b. A markedly diminished effect with continued use of the same amount of alcohol.
11. Withdrawal, as manifested by either of the following:
  - a. The characteristic withdrawal syndrome for alcohol (refer to Criteria A and B of the criteria set for alcohol withdrawal, pp. 499-500).
  - b. Alcohol (or a closely related substance, such as a benzodiazepine) is taken to relieve or avoid withdrawal symptoms. (*DSM-5* at 490)

*DSM-5* defines early and sustained remission as follows:

In early remission: After full criteria for alcohol use disorder were previously met, none of the criteria for alcohol use disorder have been met for at least 3 months but for less than 12 months (with the exception that Criterion A4, "Craving, or a strong desire or urge to use alcohol," may be met).

In sustained remission: After full criteria for alcohol use disorder were previously met, none of the criteria for alcohol use disorder have been met at any time during a period of 12 months or longer (with the exception that Criterion A4, "Craving, or a strong desire or urge to use alcohol," may be met). (*DSM-57* at 491)

I note the definitions in *DSM-5* regarding remission are not included in the Directive, and they are not controlling for security clearance decisions.

### **Mitigating Conditions**

This case involves conflicting expert opinions from Dr. B, Dr. G, Dr. W, and Mr. B about Applicant's mental-health diagnosis, compliance with treatment recommendations, need for treatment or therapy, prognosis, and Applicant's suitability for access to classified information. In ISCR Case No. 19-00151 at 8 (App. Bd. Dec. 10, 2019) the Appeal Board denied a government appeal and addressed the administrative judge's weighing of conflicting expert psychological opinions as follows:

A Judge is required to weigh conflicting evidence and to resolve such conflicts based upon a careful evaluation of factors such as the comparative reliability, plausibility, and ultimate truthfulness of conflicting pieces of evidence. See, e.g., ISCR Case No.05-06723 at 4 (App. Bd. Nov. 4, 2007). A Judge is neither compelled to accept a DoD-required psychologist's diagnosis of an applicant nor bound by any expert's testimony or report. Rather, the Judge has to consider the record evidence as a whole in deciding what weight to give conflicting expert opinions. See, e.g., ISCR Case No. 98-0265 at 4 (App. Bd. Mar. 17, 1999) and ISCR Case No. 99-0288 at 3 (App. Bd. Sep. 18, 2000). In this case, the Judge's conclusion that the magnitude and recency of Dr. Y's contacts with Applicant in combination with other corroborating evidence merited more weight than the uncorroborated opinions of Dr. K and Dr. B is sustainable.

Dr. B placed significant weight on Applicant's statement during her interview, which was inconsistent with the information in his medical and other records. He admitted he was guarded in his response to her questions. She concluded he was not a reliable reporter of his symptoms, history of alcohol use, and behavior. However, Dr. B's report receives less weight because her contact with Applicant was limited to a single interview.

Dr. W's and Dr. G's evaluations and prognosis of Applicant receive the most weight. They are more recent than Dr. B's evaluation and involved much greater contact and involvement with Applicant. Dr. W had 26 sessions with Applicant over the previous 5 ½ months. Dr. W diagnosed him with PTSD. She said he is dedicated to attendance at AA meetings. She does not believe Applicant has consumed alcohol in the last six months. She concurred with Dr. G, that Applicant's "alcoholism is in remission and that he has met all [of] his treatment goals and objectives." (AE TT) Their prognosis receives less weight because they did not review his medical records.

Applicant said his last drink of alcohol was on November 3, 2017, and he has been sober for almost six years. He said he completed AA Step Four. The problem here is a persistent concern that Applicant is minimizing his symptoms to obtain a security clearance. See Personal Conduct discussion, *infra*. See also ISCR Case No. 22-00657 at 4 (App. Bd. Apr. 18, 2023) (The Appeal Board set aside a favorable drug involvement and substance misuse finding and stated, "When the record contains a basis to question an applicant's credibility, the Judge 'should address that aspect of the record explicitly,' explaining why he finds an applicant's explanation to be trustworthy. Here, the basis to question Applicant's credibility rested in the Judge's unfavorable findings under Guideline E. It is well settled that falsification of a security questionnaire constitutes misconduct that casts serious doubt on an applicant's judgment, reliability, or trustworthiness." (citations omitted)).

Applicant's statements about such a lengthy period of abstinence were not sufficiently corroborated. For example, he did not provide statements from friends, family, coworkers, or AA participants describing such a lengthy period of sobriety. He did provide corroboration from a coworker and his fiancé about more recent periods of abstinence of three years and one year, respectively. He provided sufficient information to support more than one year of sobriety, which under *DSM-5* standards establishes sustained remission. Based on Dr. W and Dr. G's statements and his corroborating witnesses, AG ¶¶ 23(b), 23(d), and 29(b) apply. Alcohol consumption and psychological conditions security concerns are mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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. . . .

AG ¶ 16 provides one personal conduct condition that could raise a security concern and may be disqualifying in relation to her provision of inaccurate information on her SCA:

(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.

Applicant did not disclose on his June 20, 2016 SCA that he sought counseling or treatment as a result of his use of alcohol. In the Optional Comment section he said, "I attend AA meetings regularly. Spoke with a VA psychiatrist in 2011 regarding alcohol use related to PTSD issues." (Tr1. 136; GE 1 at 35) Clearly, he read the question and his optional comment minimizes the extent of his alcohol counseling and treatment. His June 20, 2016 SCA also asks "In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court?" He failed to disclose that he was charged with DUI in September and October 2014. These questions are straight forward and easy to understand. Applicant has a Ph.D., and he is clearly intelligent. He knew his answers were false at the time he provided them.

"Applicant's statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they [are] not binding on the Administrative Judge." ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

Applicant elected not to disclose negative information on his SCA. The record evidence establishes AG ¶ 16(a) in relation to SOR ¶¶ 3.a through 3.c.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(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; and

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

Applicant was not honest and candid during his OPM PSI, Dr. B's interview, and at his hearing. At his OPM PSI, he was asked three times about his alcohol treatment, he would not disclose additional information, and then each time the OPM investigator would follow up with information confronting Applicant about his alcohol treatment. After he was confronted with the information, he admitted the additional alcohol-related treatment. During Dr. B's interview, he said he was abstinent from alcohol consumption since 2014, and his medical records showed alcohol consumption in 2016 and 2017. At his hearing, he claimed his employer never urged him to attend alcohol treatment and he was never fired for reasons of alcohol consumption. His medical records contradict his claims. His medical records are given greater weight than his statement at his hearing because he was seeking medical assistance and treatment, and he was motivated to be honest. The medical evidence is more contemporaneous with the actions of his employers. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These non-SOR allegations (false statements to Dr. B, during his OPM PSI, and at his hearing) will not be considered except for the five purposes listed above.

SOR ¶ 3 alleges Applicant's false statements occurred on his June 20, 2016 SCA, which was more than seven years ago. Arguably, these false statements might be mitigated by the passage of time. However, Applicant did not honestly and candidly provide security relevant information to Dr. B, to the OPM investigator (before being confronted with the facts), and at his hearing. I have lingering concerns that his judgment errors are likely to recur and continue to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

### **Whole-Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the whole-person concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 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. I have incorporated my comments under Guidelines I, G, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 53-year-old program management specialist for a company which provides equipment to the Army. He has held a security clearance since 1994. In 1998, he received a bachelor's degree, and in 2002, he received a master's degree. In 2020, he was awarded a Ph.D. He served in the Army from 1989 to 2020. He had several deployments to combat zones, and he was awarded a Purple Heart, two Bronze Stars, and multiple impressive awards and commendations. He received a Combat Infantryman Badge, Expert Infantryman Badge, Ranger Tab, Air Assault Badge, Pathfinder Badge, and Airborne Badge. He also received PTSD and a TBI while deployed in combat zones. He received a 90 percent disability rating from the VA with 70 percent disability for PTSD. He honorably retired from the Army as a lieutenant colonel.

Applicant's performance evaluations are excellent. The general sense of his character evidence is that Applicant is honest, reliable, responsible, diligent, professional, and trustworthy. The character evidence supports approval of Applicant's access to classified information.

The DOD encourages employees to seek needed mental-health and alcohol-consumption therapy and treatment. As set forth in AG ¶ 27, no negative inference is drawn on the basis of mental-health or alcohol-related counseling or treatment. In that regard, individuals are to be encouraged to seek appropriate treatment. Applicant sought and received inpatient and outpatient mental-health and alcohol-consumption counseling and treatment, and his participation in such counseling and treatments is mitigating.

The reasons for denial of his access to classified information are more persuasive at this time. As indicated under Guideline E, Applicant was not truthful on his June 20, 2016 SCA. His claim that he did not disclose accurate information because he was waiting for his follow-up OPM interview or alternatively, due to oversight, does not excuse, extenuate, or mitigate the false statement because he did not volunteer complete and accurate information during the follow-up interview. Moreover, the OPM interview was not sufficiently close in time to his completion of his SCA to be prompt. He was aware of the comment sections on his SCA and used them; however, he did not indicate he had two DUI arrests and had received multiple alcohol inpatient and outpatient treatments. He did not disclose on his SCA that his employer required him to receive alcohol treatment to retain his employment or that on one occasion, he was terminated from employment due to alcohol abuse. He was not truthful to Dr. B and at his security clearance hearing, which shows a lack of credibility, rehabilitation, and weighs against whole-person mitigation.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Psychological conditions and alcohol consumption security concerns are mitigated; however, personal conduct security concerns are not mitigated.

### **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 through 1.j:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant

Paragraph 3, Guideline E:                   AGAINST APPLICANT

Subparagraphs 3.a through 3.c:       Against Applicant

**Conclusion**

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

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Mark Harvey  
Administrative Judge