



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



In the matter of:)
)
) USN-C No. 23-00027-R
)
)
Applicant for Security Clearance)

Appearances

For Applicant: *Pro se*
For Government: Alison O’Connell, Esq., Department Counsel

03/09/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant’s drug, alcohol, criminal, and psychological issues are largely intertwined. He is participating in counseling and therapy but has had recent relapses. Applicant did not provide sufficient information to mitigate the alleged security concerns under Guideline J (criminal conduct), Guideline G (alcohol consumption), Guideline H (drug involvement and substance misuse), and Guideline I (psychological conditions). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 10, 2019. On or about May 25, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued him a Statement of Reasons (SOR) detailing security concerns under the adjudicative guidelines for alcohol consumption (Guideline G); drug involvement and substance misuse (Guideline H), criminal conduct (Guideline J), and psychological conditions (Guideline I). The DOD CAF issued the SOR under Executive Order (Exec. Or.) 12968, *Access to Classified Information*, dated August 2, 1995; DOD Manual 5200.02,

Procedures for the DOD Personnel Security Program (PSP), effective on April 3, 2017 (DOD Manual 5200.02); and Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG)*, effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 8, 2022. (Answer) On December 2, 2022, Under Secretary of Defense (Intelligence & Security) Ronald Moultrie issued a memorandum that provided that any individual whose clearance eligibility was revoked or denied between September 30, 2022, and the date of that memorandum, shall be afforded the opportunity to pursue the DOHA hearing and appeal process set forth in DOD Directive 5220.6. On November 22, 2022, DOD Consolidated Adjudication Services denied Applicant's eligibility for access to classified information and Applicant appealed that denial under the provisions of DODM 5200.02. As a result of Under Secretary Moultrie's Memo, Applicant was given the opportunity to receive the process set forth in DOD Directive 5220.6, and he elected that process. (Tr. 9-10; Hearing Exhibit (HE) I)

The case was assigned to me on January 18, 2023. On January 27, 2023, DOHA issued a notice scheduling Applicant's hearing for February 14, 2023, via video-conference.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 7. Applicant submitted Applicant Exhibit (AE) A. All exhibits were admitted without objection. Applicant and two work-related character references testified. At the end of the hearing, I held the record open until February 24, 2023, to allow Applicant the opportunity to submit additional documentation. He timely submitted two documents, a letter from his psychologist, and a letter from his wife. Those documents are marked as AE B and AE C and admitted without objection. DOHA received the hearing transcript (Tr.) on February 24, 2023.

Findings of Fact

Based on my review of the pleadings and the record evidence, I make the following findings of fact:

Applicant is 55 years old. He has been married and divorced three times. He and his fourth wife have been married since April 2017. He has two grown children and three adult stepchildren. (GE 1; Tr. 29-30)

Applicant enlisted in the U.S. Navy in 1985. He was made a limited duty officer (LDO) in 1998, and he retired from the Navy in April 2012, as a lieutenant commander, after 27 years of service (see discussion below). After leaving the Navy, Applicant was unemployed for just under five years, from May 2012 to January 2017. From January 2017 to August 2019, he was employed as a security officer at a Naval facility. Since August 2019, he has worked at a Naval facility as a civilian. (GE 1; Tr. 27-30)

Applicant has submitted several previous SCAs, in February 1997, July 2001, and February 2007. (GE 2, GE 3, GE 4) He held a clearance from 1985 until 2012 with the Navy but does not hold one currently. (Tr. 30-31)

The security concerns under the various guidelines alleged in the SOR are largely intertwined. On his June 2019 SCA, Applicant disclosed a variety of circumstances of security concern. He disclosed hospitalizations and treatments for severe depression and substance abuse, at separate facilities, in 2013 and 2015-2016. He disclosed a diagnosis of bipolar disorder and severe depression, but noted that counseling, treatment, and coping mechanisms were effective and that he no longer suffered from the conditions. (GE 1 at 37-39; Tr. 42-45) (SOR, Guidelines G, I)

Applicant also disclosed a September 2015 charge for possession of marijuana and a December 2017 arrest for assault of a family member. (GE 1 at 40-42; GE 5, GE 6) He disclosed daily use of cocaine and marijuana from June 2012 to December 2015, recreationally and as a coping technique. He asserted that he had committed to never use illegal drugs again due to a religious conversion. (GE 1 at 43-45; Tr. 40) He disclosed participation in and completion of a drug and alcohol treatment program through the Department of Veterans Affairs (VA) from January to April 2016. (GE 1 at 46) (SOR, Guidelines G, H, J, I)

In 1982, Applicant was charged with felony burglary as a minor. Applicant was a "lookout" for some friends who broke into the home of another one of their friends. He received a year of probation. (Tr. 31-32; GE 2) (This charge was not alleged in the SOR)

In 1987, while in the Navy, he was charged with possession of marijuana. He was with some friends who were using marijuana, and when an officer approached, a friend threw the marijuana into Applicant's lap. He reported it to his command, tested negative in a drug test, and the case was dismissed. He denied using marijuana that night. (Tr. 32-33) (This citation was not alleged in the SOR)

In February 1991, Applicant was arrested and charged with driving under the influence of alcohol (DUI). He was going through a divorce at the time. He was convicted of DUI and received a year of probation. He attended an alcohol safety awareness program (ASAP) for about four months. (Tr. 34; GE 3, GE 4) (SOR, Guideline J only)

In February 2000, Applicant was cited for public intoxication. (SOR, Guideline J only) He acknowledged the offense but did not recall details. He believes he received probation. (Tr. 34)

In January 2002, Applicant was arrested and charged with assault and battery of a family member. He said he took a cell phone from his wife against her will. She was injured when they fell to the floor. Applicant pled no contest. He was fined and placed on probation. (Tr. 35-36; GE 2) (SOR, Guideline J)

In November 2010, Applicant was charged under article 134 of the Uniform Code of Military Justice (UCMJ) with possession of child pornography. He was given non-judicial punishment (NJP) under UCMJ Article 15, and he received a letter of reprimand. (GE 5) (SOR, Guideline J) Applicant said he “made a poor decision to plug in my external hard drive into the [government] computer, and it had explicit files.” (Tr. 36) He was told that one of the files was determined to be of someone not of legal age. This led to his administrative separation from the Navy, in 2012. (Tr. 30, 36-37) He had a clearance at the time, (GE 7)

In December 2010, Applicant was diagnosed with bipolar disorder by a personal counselor. He took medication as prescribed, until he changed duty stations and moved to a new state and saw a new psychiatrist. He established contact with a new psychiatrist through the VA in about 2012. He adhered to his medications as prescribed until his relapse in 2020, discussed below. (Tr. 37-39; GE 7) (SOR, Guideline I)

Applicant acknowledged that after he left the Navy in 2012, he began using drugs and alcohol regularly. He used marijuana and cocaine daily from 2012 to about December 2015. (SOR, Guideline H) He acknowledged using cocaine before 2012, but not in the military. He used marijuana in high school, and he said he “may have” used marijuana in the military “on a couple of occasions.” (Tr. 40-41)

Applicant was hospitalized and treated for severe depression and substance abuse in September 2013 at a VA medical center. (GE 1 at 34) (SOR Guidelines H, I)

In September 2015, the police were called to Applicant’s house after a neighbor smelled marijuana, and they found marijuana on the coffee table. Applicant was charged with possession of marijuana. He was convicted and placed on a year’s probation. (Tr. 43-44) (SOR, Guidelines H, J)

Applicant was treated for severe depression, first in September 2015 at a private psychiatric facility and then from December 2015 to January 2016 at a VA medical center. (GE 1 at 38) Applicant was diagnosed with cyclothymic disorder- initial, bipolar mood disorder, and substance abuse disorder – alcohol, as well as cocaine dependence and marijuana/cannabis dependence. He tested positive for alcohol use in February 2017. It was recommended that he continue attending counseling sessions relating to his military deployments, and to attend Alcoholics Anonymous meetings as needed. (SOR, Guideline G, H, I) (GE 7; Tr. 44-45)

In December 2017, Applicant was arrested and charged with misdemeanor assault on a family member. He had been drinking and was under the influence of alcohol. He and his wife got into an argument, and he slapped her. He pled no contest and was convicted. He received two years of probation. He attended and completed anger management counseling as required, about four months later. (SOR, Guidelines G, J) (The SOR also references statements apparently made by Applicant about this incident during his August 2019 background interview, but that interview is not in evidence here).

In October 2020, Applicant was hospitalized for one month after going off his bipolar medication and relapsing for about three weeks. He said it was due to his mother's death and his son's arrest. He said that was the only time he has been off his medication. He was advised not to consume drugs or alcohol in combination with his bipolar medication. (Tr. 25-26, 45-49, 53-54; GE 7)

The DOD CAF requested in June 2020 that Applicant participate in a DOD-sanctioned medical evaluation, which he did, on December 20, 2021. (GE 7) Records from Applicant's prior hospitalizations and treatments at the VA facilities were apparently reviewed by the evaluators, as they are referenced in the medical evaluation at some length. (GE 7) However, those underlying records are not part of the evidence in this case. Thus, it is difficult to determine with certainty what those records reflect in terms of specific recommendations for Applicant.

The DOD evaluators, a psychology intern, and a Ph.D. clinical psychologist, diagnosed Applicant with alcohol dependence, in partial remission, but also found that he nonetheless continued drinking. The evaluators found that at times Applicant drank too much, suggesting that he was struggling to manage his addiction. (GE 7) (SOR, Guidelines G, I)

The DOD evaluators also diagnosed Applicant with cannabis dependence and cocaine dependence, both uncomplicated, in partial remission. The evaluators noted that Applicant continued to use marijuana but denied using cocaine after his 2016 treatment. (GE 7) (SOR, Guidelines H, I)

The December 2021 medical evaluation shows that currently and by history Applicant has a history of bipolar disorder, resulting in several hospitalizations, most recently in October 2020, after he discontinued his medications and entered a manic period. Noncompliance with medication is indicated. Future manic episodes were noted to be likely due to discontinuing his medication. He was found to be at risk for further problems of high-risk behavior given his continued substance abuse (alcohol and marijuana) and history of criminal behavior. (GE 7) (SOR, Guidelines H, I)

The DOD evaluators concluded that:

[Applicant], currently and by history, has a diagnosis of bipolar disorder, which has required several hospitalizations, most recently in October 2020. And has a longstanding history of behaviors of concern, which may suggest the presence of a material defect in his ability and/or willingness to properly safeguard classified information or perform sensitive duties. (GE 7 at 3)

Applicant has taken prescription painkillers not prescribed to him in the past. He had back surgery in 2010 and used someone else's Vicodin for four days before going to the doctor. (Tr. 51-52)

Applicant said he remained sober after his first hospitalization (2013) for about six months. (Tr. 43) After his second hospitalization (2015-2016), he attempted to maintain sobriety through participation in Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) as well as another program, "Continuing Recovery" (CR) through a local church. (Tr. 45-46, 53; AE A)

Applicant said he was tested for drug and alcohol use at the VA and tested positive for alcohol in February 2017; this was his first relapse after his second hospitalization. After that, he remained sober until November 2017, when he had one drink. That was his only relapse until October 2020. (Tr. 47-48)

Applicant has had no further hospitalizations since October 2020, and no subsequent criminal charges. (Tr. 54) Applicant initially asserted that he had not had any subsequent relapses. He then acknowledged that he had consumed alcohol since then, though "not very often," but as recently as August or September 2022. (Tr. 45-49)

Applicant said the last time he used cocaine was February 2015. During his DOD evaluation in December 2021, he admitted during his December 2021 medication evaluation that he had consumed marijuana sparingly "in recent months." (GE 7 at 2) In his hearing testimony, he acknowledged using marijuana in August or October 2022. He is still being drug-tested by his psychiatrist. (Tr. 50-51, 54-55; AE B)

Since December 2021, Applicant attends the CR program regularly. He attends weekly meetings on Monday nights, and the 12-step program on Saturday mornings. (Tr. 20-21, 54; AE A) Applicant also participates in counseling with two psychologists, one through the VA, and one private provider, every Friday. (Tr. 21) He started monthly counseling with the VA three months before the hearing and has seen his private psychologist for the last two and a half years, since mid-2020. He also sees a VA psychiatrist about every six months for prescribed medications (Lithium, Abilify, and Trazadone.) (Tr. 21-25)

When asked what had changed in his life since the DOD CAF medical evaluation in December 2021, Applicant said he was committed to improvement, through his wife's devotion and as a dedicated Christian. He puts his faith first and chooses to resist the temptations of drugs and alcohol. (Tr. 26-27)

At his hearing, Applicant testified that he understands the security concerns at issue since his October 2020 relapse. He said he has been "proactive" in following weekly and monthly therapy and counseling to learn more coping techniques. He continues to participate in the CR recovery program as well as a 12-step program. (Tr. 18, 54 AE A) He acknowledged that, while bipolar anxiety disorder does not have a cure, he remains on prescribed medications and can achieve "a balanced quality of life and a clarity of mind." (Tr. 19) He expressed remorse for his actions and hopes to avoid repeating his patterns of the past. Understanding the odds against him, he requests a "pardon" for his past mistakes and history and requests eligibility for a clearance. (Tr. 19)

Applicant closed by noting again his remorse for his past choices. He has hope for the future due to making better choices. He has accomplished a six-month period of probation (sobriety and abstinence) through drug tests and ongoing psychological counseling. He requests an opportunity to demonstrate his judgment, trustworthiness, and reliability through eligibility for a clearance. (Tr. 76-77)

After the hearing, Applicant submitted a February 2023 letter from Dr. L, a Ph.D. licensed clinical psychologist, who has been treating Applicant since November 2020, for “psychotherapeutic treatment of his bipolar depression, alcoholism, chemical dependency, and related emotional-behavioral difficulties.” (AE B) Dr. L administers voluntary, random drug tests to Applicant, and he has tested negative since October 2022. This five-month period is Applicant’s longest period of “clean drug screenings” since Dr. L has been treating him. Dr. L wrote that Applicant is in the “early stages of his recovery.” He has had numerous relapses during the past two years of his treatment, through October 2022. Dr. L is cautiously optimistic that Applicant will continue his recovery successfully. (AE B) (Dr. L’s conclusions suggest more frequent drug usage since October 2020 than Applicant admitted during his testimony).

Applicant’s wife also submitted a letter. She has known Applicant for almost 20 years, and they have been married for almost six years. They have had challenges, but she is confident in her husband’s recovery because he is devoted and committed to the treatment plan. It includes weekly therapy and counseling sessions, attendance in a recovery program, and a church men’s group. Applicant is remorseful for his past actions and regrets stopping his medication in October 2020 while coping with his mother’s death and his son’s arrest. His job with the Navy is fulfilling and satisfying. She requests that he be allowed to retain his clearance as he is the family’s sole source of income. (AE C)

Two work colleagues of Applicant’s both presented similar positive testimony in support of his eligibility for a clearance. Mr. W has worked at the Navy facility, with a clearance, since 2008, after 20 years in the Marine Corps. He has been Applicant’s supervisor in one capacity or another over the last three years. They have daily contact. Applicant “gives 100 percent every time he’s at work.” He is in the “98th percentile” of people in terms of integrity and getting the job done. He is a responsible man who takes care of his wife and children. He has told the truth about his past. Mr. W strongly favors Applicant’s eligibility for a clearance. (Tr. 56-63)

Mr. S, a Navy veteran and clearance holder, is a co-worker of Applicant’s for about the last year. He attested to Applicant’s strong work ethic. Applicant took Mr. S under his wing and took the initiative to be welcoming to Mr. S when he started at the Navy facility. If Mr. S had to choose someone to be on his team, he would choose Applicant first. He gets the job done in a safe, professional manner. If Applicant were to leave, the organization would be greatly impacted. “If the government is looking for good people, then he is one of them,” he said. (Tr. 64-71)

Policies

It is well established that no one has a right to a security clearance. Security determinations should err, if they must, on the side of denials. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination whether the person is eligible for a security clearance. The adjudicative process is an evaluation of the whole person. It recognizes that we should view persons by the totality of their acts, omissions, motivations, and a number of other variables. Each case must be adjudged on its own merits, taking into consideration all relevant evidence, both favorable and unfavorable, and applying sound judgment, common sense, and careful analysis.

The standard for security clearance decisions is whether granting or continuing eligibility for a clearance is clearly consistent with the interests of national security. In all adjudications, the protection of the national security is the paramount consideration. Therefore, any doubt concerning a person being considered for access to classified information must be resolved in favor of national security.

Analysis

The SOR prepared by the DOD CAF details allegations and security concerns under Guideline G (three unnumbered subparagraphs); Guideline H (eight unnumbered subparagraphs), Guideline I (six unnumbered subparagraphs); Guideline J (seven unnumbered subparagraphs).

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is set out in AG ¶ 21:

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

The alcohol consumption guideline notes several conditions that could raise security concerns under AG ¶ 22. The following are potentially applicable:

(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;

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

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

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

Applicant was hospitalized and treated for substance abuse at VA facilities in 2013 and 2015-2016. He was diagnosed with substance abuse disorder, alcohol, during his 2015-2016 treatment at the VA. He was referred to AA and subsequently tested positive for alcohol use in 2017. (SOR, Guideline G, ¶¶ 1, 2)

Hospitalizations and treatments for substance abuse (alcohol or otherwise) are not, themselves, disqualifying conduct under Guideline G; indeed, an applicant's efforts to address substance abuse issues through treatment and counseling is evidence to be considered in mitigation. However, subsequent alcohol use that is contrary to treatment recommendations is potentially disqualifying. AG ¶ 22(d) applies to the diagnoses in 2013 and 2015-2016 and AG ¶ 22(f) applies to his subsequent alcohol use.

Applicant was arrested in December 2017 for assault on a family member. (SOR, Guideline G, ¶ 1). He acknowledged drinking at the time of the incident. AG ¶ 22(a) applies.

During Applicant's December 2021 DOD evaluation by a clinical psychologist, he was diagnosed with alcohol dependence in partial remission but continued to use alcohol. (SOR, Guideline G, ¶ 3) AG ¶¶ 22(d) and 22(f) apply.

Conditions that could mitigate alcohol involvement 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 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 alcohol issues. He has been diagnosed with substance abuse disorder several times, by the VA in 2015-2016, and most likely in 2013

as well, though this is less clear. He attempted sobriety after each hospitalization and treatment period, and he has participated in AA. He continues with regular, frequent, ongoing participation in the CR recovery program, and continues as a patient with more than one psychologist regularly for his “bipolar depression, alcoholism, chemical dependency and related emotional-behavioral difficulties.” However, he has a history of relapses, including in October 2020, and subsequently. He has been diagnosed most recently, in December 2021, with alcohol dependence, in partial remission. He was also found to have consumed alcohol, including at times to excess, suggesting that he was struggling to manage his addiction. He acknowledged drinking as recently as August or September 2022. His issues with alcohol, intertwined with his other, ongoing substance abuse issues (Guideline H, below) and psychological conditions (Guideline I, below), are both long-term and ongoing, and they continue to cast doubt on his judgment, trustworthiness, and reliability. AG ¶ 23(a) does not apply.

Applicant is credited with his ongoing efforts to address his alcohol (and other) issues, through repeated hospitalizations, treatment periods, ongoing professional therapy and medication, and group counseling. But he has a history of repeated relapses that cannot be ignored in considering the risk of future issues. AG ¶¶ 23(b), 23(c), and 23(d) do not apply to mitigate Applicant’s problematic history of 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);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(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

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

It is illegal under Federal law to manufacture, possess, or distribute certain drugs, including marijuana. (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844) All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. (§§811, 812) Marijuana is classified as a Schedule I controlled substance, §812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. (§812(b)(1); See *Gonzales v. Raich*, 545 U.S. 1 (2005))

Applicant used both cocaine and marijuana on an approximately daily basis from 2012 to December 2015. (SOR, Guideline H, ¶¶ 3, 6, 7) He said he had not used cocaine since then but, acknowledged in his December 2021 medical evaluation that he had used marijuana in the past few months. (SOR, Guideline H, ¶ 8) AG ¶ 25(a) applies to both the cocaine use and the marijuana use.

(Note: Under Guideline H, SOR ¶¶ 6 and 7 of Guideline H allege weekly (rather than “daily”) cocaine and marijuana use by Applicant in various periods between 2012 and 2015, as detailed in his August 2019 background interview. However, that background interview is not in evidence here).

Applicant was charged with possession of marijuana in 2015. (SOR. Guideline H, ¶ 2). AG ¶ 25(c) applies.

Applicant was hospitalized and treated for substance abuse in 2013, 2015 and from 2015-2016. (SOR, Guideline H, ¶¶ 1, 4, 5) As with alcohol, hospitalizations and treatments for substance abuse are not, themselves, disqualifying conduct under Guideline H; indeed, an applicant’s efforts to address substance abuse issues through treatment and counseling is evidence to be considered in mitigation. However, he was also diagnosed with cocaine dependence and marijuana/cannabis dependence during his 2015-2016 treatment at the VA. (SOR, Guideline H, ¶ 5)

AG ¶ 25(d) applies to those diagnoses. It also applies to the DOD’s December 2021 diagnoses of cannabis dependence, uncomplicated, in partial remission, and cocaine dependence, uncomplicated, in partial remission.

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 issues with illegal drugs are not mitigated for largely the same reasons as set forth under Guideline G. He has a long history of extensive illegal drug use, most prominently from 2012 to 2015. During that time, he made several attempts at treatment for his substance abuse issues but has had several relapses and recurring instances of marijuana use since then. He used marijuana only months before his December 2021 DOD evaluation and used marijuana as recently as August or September 2022, only months ago. He is in counseling and is subject to random drug tests by his psychologist, Dr. L, but his most recent period of abstinence (five months) is the longest such period of abstinence since Applicant has been under Dr. L's care (since November 2020). This suggests more relapses, and more frequent relapses, than Applicant admitted during his hearing. Regardless, given his diagnoses of cocaine dependence and cannabis dependence, both in remission, five months of abstinence is not nearly enough to establish that his issues with illegal drugs are in his past and are unlikely to recur. No AGs apply to mitigate the Guideline H security concerns.

Guideline J: Criminal Conduct:

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant had several criminal offenses between 1991 and December 2017, including: a February 1991 DUI (alleged under Guideline J, but not Guideline G); a February 2000 citation for public intoxication (same); a marijuana possession charge in September 2015; and arrests for assault on a family member, in January 2002 and December 2017. (SOR, Guideline J, ¶¶ 1-3, 5-6) AG ¶¶ 31(a) and 31(b) both apply.

The SOR also alleges that Applicant has continued to use marijuana, an illegal drug under federal law, since 2012. (SOR, Guideline J, ¶ 7) (Applicant's use of cocaine from 2012-2015, also illegal, is not alleged). AG ¶¶ 31(a) and 31(b) both apply.

The final Guideline J allegation (¶ 4) at issue concerns Applicant's NJP in November 2010 under Article 15 of the UCMJ for possession of child pornography, for which he received a letter or reprimand (and which led to his separation the Navy). The underlying records for this offense are not in the record here, though the proceeding is listed on Applicant's FBI record. Applicant acknowledged putting an external hard drive that contained "explicit files" into a government computer and acknowledged that there was an allegation that one of the files contained an image of someone underage. Despite the limited record evidence on this allegation, AG ¶ 31(b) nonetheless applies.

AG ¶ 32 sets forth the potentially applicable mitigating conditions for criminal conduct:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The case for mitigation under Guideline J is arguably greater than for the other guidelines at issue here. Applicant has not had any criminal charges, citations, or offenses since December 2017, now over five years ago. The incident with the external hard drive, though serious enough to lead to his separation from the Navy, is now over 10 years old. It is, however, another instance of poor judgment. Nonetheless, Applicant's continued

involvement with marijuana (which remains illegal under federal law) precludes a finding that his criminal conduct issues are mitigated. Further, they are sufficiently intertwined with his other, unresolved issues (alcohol, drugs, and psychological conditions) that it is difficult to mitigate the criminal conduct solely due to the lack of recent charges. Applicant is credited under this guideline with a good employment record, and with his continued efforts to address his issues in counseling. But his issues are too intertwined and too recent to warrant mitigation. No Guideline J mitigating 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:

- (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.

Applicant's voluntary hospitalizations from September 2013 to October 2013, in September 2015, from December 2015 to January 2016, and in October 2020 (SOR, Guideline I, ¶¶ 1, 2, 3, 5, 6) satisfy AG ¶ 28(c).

Applicant was diagnosed in 2010 with bipolar disorder and in December 2015 with cyclothymic disorder, bipolar mood disorder, and substance abuse disorder, alcohol. (SOR, Guideline I, ¶¶ 4, 5) His diagnosis of bipolar disorder was confirmed in the DOD's December 2021 medical evaluation, by a qualified Ph.D. clinical psychologist. (SOR, Guideline I, ¶ 6) Applicant's bipolar disorder has been determined to be a condition that may impair his judgment, stability, reliability, or trustworthiness. AG ¶ 28(b) applies.

Applicant has a history of non-compliance with his treatment plan, including in October 2020, when he stopped taking his medication during a stressful period in his life, after his mother's death and his son's arrest. (SOR, Guideline I, ¶ 6) AG ¶ 28(d) applies.

Applicant's substance abuse issues (and related criminal conduct) constitute "behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness," but those issues are also alleged under other guidelines and found to be disqualifying. Thus, it cannot be said that they are "not covered under any other guideline" even if they "may indicate an emotional, mental, or personality condition. As such, ¶ AG 28(a) does not apply. Nevertheless, Applicant remains at risk for future high-risk behaviors due to his bipolar disorder and long history of substance abuse.

AG ¶ 29 sets forth the potentially applicable mitigating conditions for psychological conditions under Guideline I:

(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.

No Guideline I mitigation conditions apply, largely for the same reasons as set forth under the other guidelines. Applicant was diagnosed with cocaine dependence and cannabis dependence, both in remission. He has several diagnoses of bipolar disorder over several years. To his credit, Applicant has been in professional counseling with two

counselors or psychologists, and he has been participating in group therapy and a 12-step program through a church.

Since November 2020, Applicant has seen Dr. L for “psychotherapeutic treatment of his bipolar depression, alcoholism, chemical dependency, and related emotional-behavioral difficulties.” (AE B) Applicant is in the “early stages of his recovery,” and Dr. L is cautiously optimistic that Applicant will continue his recovery successfully. However, Applicant has had numerous relapses during the past two years of his treatment, through October 2022. His recent five-months of sobriety, since fall 2022, is his longest such period while under Dr. L’s care. As Dr. L noted, Applicant has had several relapses since November 2020 (and more than Applicant admitted during his own testimony). Further, Applicant’s bipolar diagnosis is intertwined with his long-term issues of substance abuse (both alcohol and illegal drugs). This increases the risk of future problematic behavior. AG ¶¶ 29(a) and 29(b) do not fully apply. AG ¶¶ 29(d) and 29(e) are simply not established.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the relevant circumstances. An 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.

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, J, and I in my whole-person analysis.

In weighing the whole-person evidence, I credit and acknowledge the testimony of Applicant’s two co-workers, both of whom attested to his integrity, work ethic, professionalism, and value to his employer. I also credit the letter from Applicant’s wife, who is supporting him on his path to recovery. I also credit Applicant’s long and honorable service to the Navy and the nation, both in and out of uniform. However, I must also consider his long history of substance abuse issues, criminal history, and his psychological condition. Applicant has made several efforts to address his issues, and those efforts are ongoing, with the help of doctors and counselors. But his issues are long-term, his recovery is in the early stages, and he has had recent relapses. Given his long history and

his pattern of track record of substance abuse, sobriety, treatment, and relapse, coupled with his ongoing bipolar disorder, he has not established that his various security concerns are in his past and unlikely to recur. Given the totality of the record evidence, Applicant did not provide sufficient information to mitigate security concerns regarding his alcohol involvement, drug involvement and substance misuse, criminal conduct, and psychological conditions. I cannot conclude that it is clearly consistent with the national interest to recommend that Applicant regain his eligibility for access to classified information, or a national security sensitive position.

Overall, the record evidence leaves me with doubts as to his eligibility for access to classified information. Accordingly, it is not clearly consistent with the interests of national security to grant him renewed access to classified information and assignment to sensitive duties.

Formal Findings

Guideline G: Alcohol Consumption:	AGAINST APPLICANT
Subparagraphs 1-3:	Against Applicant
Guideline H: Drug Involvement:	AGAINST APPLICANT
Subparagraphs 1-8:	Against Applicant
Guideline I: Psychological Conditions:	AGAINST APPLICANT
Subparagraphs 1-6:	Against Applicant
Guideline J: Criminal Conduct:	AGAINST APPLICANT
Subparagraphs 1-7:	Against Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge