



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



In the matter of:)
)
) ISCR Case No. 23-00178
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

02/27/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines D (sexual behavior), E (personal conduct), H (drug involvement and substance misuse), and I (psychological conditions). Eligibility for access to classified information is denied.

Statement of the Case

On June 6, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D, E, H, and I. Applicant responded to the SOR on July 16, 2023, and requested a decision based on the written record in lieu of a hearing. On August 14, 2023, Department Counsel requested a hearing before an administrative judge. On August 22, 2023, Applicant changed his request to a hearing before an administrative judge. The case was assigned to me on November 28, 2023.

The hearing convened as scheduled on January 18, 2024. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through M, which were admitted without objection.

Without objection, I have taken administrative notice of certain provisions of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). I have not attached copies to the record as the source material is readily available.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since 2009. He has held a security clearance since about 1997, but it has been suspended since December 2019. He earned a bachelor's degree in 1994. He married in 1995 and divorced in 2016. He married for the second time in the fall of 2023. He has two adult children. (Transcript (Tr.) at 11-14, 18-19, 28, 38; GE 1, 2, 6; AE A, G)

Applicant has been involved in a series of indiscriminate high-risk sexual encounters ("hook-ups") with consenting adults since about 1992. Once the Internet became prevalent, he met the individuals online through various websites designed for that purpose. He met the individuals in hotels, houses, public restrooms, public parks, and adult bookstores. He stopped using public places in about 2014. Applicant and the individuals remained anonymous or on a first-name basis. He could only recall two individuals who he met more than once, and he did not know their last names. He concealed his behavior from his then wife and other individuals until about 2010. After 2010, he and his wife had an open marriage, and she accepted that he had multiple partners outside the marriage. She also had at least one extramarital partner. (Tr. at 19-20, 37-38; Applicant's response to SOR; GE 2, 3, 5; AE M)

Applicant and his then wife had an agreement that they would not have sex within 24 hours of either one of them having sex with someone else. He violated that agreement and sexually assaulted his then wife in about 2011 and again in 2012 while she was asleep and within 24 hours of a sexual encounter. In 2011, he engaged in oral sex with her without her consent, and in 2012, he digitally penetrated her without her consent. (Tr. at 21-23, 38-39; Applicant's response to SOR; GE 3; AE M)

Applicant and his second wife received couples' counseling, and he received counseling for sexual addiction from a licensed clinical social worker (LCSW) from 2012 to 2014. He also attended Sex Addicts Anonymous (SAA) meetings. He attributes the assaults to his undiagnosed and untreated bipolar disorder and the incorrect medication, which made him hypersexual. (Tr. at 20-24; Applicant's response to SOR; GE 2, 3, 5; AE M) He wrote in his response to the SOR:

The sexual assaults were committed during a time when I was misdiagnosed and prescribed an antidepressant that exacerbated my manic episodes. Under proper diagnosis and proper medication, these events would not have occurred, and will not occur again.

Applicant's ex-wife became involved in an ongoing extramarital relationship in about 2011. In about 2012, Applicant became involved in an ongoing relationship with the individual who eventually became his husband. Applicant and his ex-wife separated

in about 2013. They disclosed their extramarital relationships to their children the same year. Applicant informed his new partner (current husband) of his multiple sexual encounters, and they maintained an open relationship. His last sexual encounter with someone other than his husband occurred in about August or September 2023. He stated that he has not had any extramarital sexual encounters since he married. Applicant remains on good terms with his ex-wife. She sincerely congratulated him on his recent marriage. (Tr. at 18-19, 27-29, 37; Applicant's response to SOR; GE 2, AE K)

Applicant has received treatment from a psychiatrist since 2014. He received several diagnoses over the years, but he has consistently been diagnosed with bipolar II disorder. He was prescribed different medications based on that diagnosis. He told the psychiatrist in 2019 that he was disappointed his ex-wife chose to end the marriage after he sexually assaulted her. He felt that since the assaults occurred before he received the correct diagnosis and treatment, she should have been more forgiving. In July 2021, the psychiatrist diagnosed him with bipolar II disorder; fetishistic disorder (non-living objects); amphetamine-type use disorder, intermittent relapse/remission; and cannabis use disorder, mild. In January 2023, he was diagnosed with bipolar II disorder, stable; amphetamine-type use disorder, in sustained remission; cannabis use disorder, mild; and fetishistic disorder (non-living objects). (Tr. at 23-27; Applicant's response to SOR; GE 3)

Applicant used methamphetamine for the first time in about October 2018, when it was offered to him during a sexual encounter. Applicant used methamphetamine regularly (every six to eight weeks) during certain sexual encounters until about June 2021. He found that it enhanced his experience. The methamphetamine was always provided by the other individual. (Tr. at 29-30, 40; Applicant's response to SOR; GE 2, 3, 5; AE M)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2019. He intentionally provided false information when he denied using any illegal drugs or controlled substances in the last seven years. He thought the information would be shared with his employer and possibly law enforcement. He was concerned that he would lose his job and face criminal charges. (Tr. at 42; Applicant's response to SOR; GE 1, 2)

Applicant was interviewed for his background investigation in June 2019. He again intentionally provided false information when he stated that he did not use illegal drugs of any kind. (Tr. at 42-43; Applicant's response to SOR; GE 2)

Applicant continued using methamphetamine after the background interview. He realized that his psychiatrist knew about his illegal drug use and that the DoD had sought his medical records. In August 2019, he reported his methamphetamine use and compulsive sexual behavior to his employer, who in turn reported it to the DoD. He also reported that he had been diagnosed with bipolar II disorder. He discussed his counseling and treatment. He told his employer that his next step was to engage with the Employee Assistance Program to find a therapist, and that he would likely start attending Narcotics Anonymous meetings. Applicant's security clearance was

suspended in December 2019. (Tr. at 41, 44; Applicant's response to SOR; GE 2, 3, 5, 6; AE M)

Applicant continued using methamphetamine after he reported it to his employer. He used marijuana for the first time in early 2020 when it was provided to him during a sexual encounter. He received counseling from a psychologist from July 2021 to September 2021. He was diagnosed with bipolar II disorder and adjustment disorder with mixed anxiety and depressed mood. (Tr. at 32; Applicant's response to SOR; GE 2-5; AE M)

Applicant stopped using methamphetamine in about June 2021, but he continued to use marijuana until about April 2023. He was interviewed by a background investigator in January 2022. He discussed his "hook-ups" and his drug use. He stated that he had been in an open relationship since about 2012 with an individual (current husband) who is aware of his sexual encounters. (Tr. at 30-32; Applicant's response to SOR; GE 2, 3, 5; AE M)

Applicant told the background investigator that he used marijuana about once a week or every other week at home alone. He lives in a state where marijuana possession and use do not violate state law. He stated that marijuana helped to fight his cravings for methamphetamine. He stated that he did not believe he used marijuana while holding a security clearance because his security clearance was no longer valid as of December 2019. He thought that his employer permitted his marijuana use because he did not have a security clearance. He stated that he would continue to use marijuana but would stop if it was required for his employment or security clearance. (Tr. at 33, 41, 44; GE 2)

Applicant continued using marijuana after the background interview. In his February 2023 response to interrogatories, he wrote that he was using marijuana about once or twice a week. He wrote that marijuana helped him stay sober from methamphetamine. He wrote, "If required, in order to regain my clearance, I would be willing to give it up." (Tr. at 43-44; GE 2)

Applicant stated that he has not used marijuana or any other illegal drug since April 2023. He believes that marijuana is no longer necessary for his sobriety from methamphetamine. He tested negative in drug tests administered in September 2023 and November 2023. He successfully completed an eight-hour drug awareness program in December 2023. He signed a statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility. (Tr. at 33-35, 43; Applicant's response to SOR; AE B-D, M)

Applicant engaged a board-certified psychologist for an evaluation in December 2023. He diagnosed Applicant with bipolar II disorder, most recent episode hypomanic, in full remission; compulsive sexual behavior disorder, in early remission; and stimulant use disorder, amphetamine-type substance, moderate, in sustained remission. He found that when Applicant "first sought care for mental health symptoms in 2011, his

condition was misdiagnosed so he was prescribed Wellbutrin which exacerbated his manic symptoms.” The psychologist reported that in 2014, Applicant was seen by his treating psychiatrist, who diagnosed him with bipolar II disorder and prescribed him mood stabilizing medications with positive results. The psychologist also found that “[d]espite finding substantial relief from mood stabilizers, [Applicant] continued to struggle with impulsive and compulsive behaviors.” Regarding Applicant’s sexual behavior, the psychologist found:

[Applicant’s test scores] are typically seen as consistent with the scores of those who engage in or have engaged in sexually compulsive behavior. He admitted his sexual behavior has caused problems for him in his life, that he has felt distressed about his sexual behaviors, and that he tried and failed to stop engaging in distressing sexual behavior in the past. He admitted he is often preoccupied with sexual thoughts and that, historically, his sexual behavior has created problems for him and his family and emotionally hurt those in his life. He admitted he has sought treatment for sexual behavior problems. [Applicant] admitted he has had multiple sexual partners at the same time and has engaged in risky sex even though he knew it could cause him harm. He admitted he had cruised public places, such as parks, for sex with strangers so that his sexual behavior has put him at risk for lewd conduct or public indecency.

* * *

Fortunately, through specific treatment for sexual issues, participation in SAA, effective mood regulation, and personal growth and maturity, [Applicant] now seems to have gained a fair measure of control over his sexual behaviors. He has now been monogamous in his current relationship since October 2023 suggesting this condition is in early remission.

The psychologist concluded:

Based on all the available data, [Applicant’s] mental health symptoms appear to be well controlled with medication at this time. He likely still experiences mild mood symptoms but he has developed excellent insight concerning bipolar disorder, is able to manage his symptoms and has a track record of seeking help when needed. [Applicant] no longer uses methamphetamine and given his limited use history and the time since last use, the risk he will relapse seems quite low. Likewise, he does not seem to be at risk for returning to marijuana use. [Applicant] has struggled with his sexual identity and behavior for most of his adult life and this seems to be an ongoing challenge for him. He has however, gained much through his 10 year history of treatment and he has shown a pattern of increased self-control over the last several years. He has now been monogamous for more than three months, further suggesting mastery over his sexual behavior.

At this time, based on the available data and given his current mental status and track record of successfully managing a clearance in the past, it is unlikely that any of his conditions could negatively impact his reliability, trustworthiness, or judgment while working in a cleared setting or around classified information. (AE M)

Applicant submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his professionalism, trustworthiness, reliability, work ethic, and loyalty to the United States. He is recommended for a security clearance. (AE F, H-J)

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)

The DSM-5 is the standard classification of mental disorders used by mental health professionals in the United States. The following is summarized from the DSM-5:

Bipolar II Disorder

Bipolar II disorder is characterized by a clinical course of recurring mood episodes consisting of one or more major depressive episodes and at least one hypomanic episode. The major depressive episode must last at least two weeks, and the hypomanic episode must last at least four days to meet the diagnostic criteria.

Major Depressive Episode

The essential feature of a major depressive episode is a period of at least two weeks during which there is either depressed mood or the loss of interest or pleasure in nearly all activities.

Hypomanic Episode

A distinct period of abnormally and persistently elevated, expansive, or irritable mood and abnormally and persistently increased activity or energy, lasting at least four consecutive days and present most of the day, nearly every day.

The episode is associated with an unequivocal change in functioning that is uncharacteristic of the individual when not symptomatic. The disturbance in mood and the change in functioning are observable by others. The episode is not severe enough to cause marked impairment in social or occupational functioning or to necessitate hospitalization.

Adjustment Disorder

The essential feature of adjustment disorders is the presence of emotional or behavioral symptoms in response to an identifiable stressor. By definition, the disturbance in adjustment disorders begins within three months of onset of a stressor and lasts no longer than six months after the stressor or its consequences have ceased.

A stressor may be a single event (e.g., a termination of a romantic relationship), or there may be multiple stressors (e.g., marked business difficulties and marital problems). Stressors may be recurrent (e.g., associated with seasonal business crises, unfulfilling sexual relationships) or continuous (e.g., a persistent painful illness with increasing disability, living in a crime-ridden neighborhood). Adjustment disorders are associated with an increased risks of suicide attempts and completed suicide.

Symptoms or behaviors are clinically significant, as evidenced by one or both of the following:

1. Marked distress that is out of proportion to the severity or intensity of the stressor, taking into account the external context and the cultural factors that might influence symptom severity and presentation.
2. Significant impairment in social, occupational, or other important areas of functioning.

Substance Use Disorder

The essential feature of a substance use disorder (including cannabis use disorder and amphetamine use disorder) is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems.

Fetishistic Disorder

The paraphilic basis of fetishistic disorder involves the persistent and repetitive use of or dependence on nonliving objects or a highly specific focus on a (typically nongenital) body part as primary elements associated with sexual arousal. A diagnosis of fetishistic disorder must include clinically significant personal distress or psychosocial role impairment.

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

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

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

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

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

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

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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

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

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

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

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

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

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

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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant intentionally provided false information in his January 2019 SF 86 when he denied using any illegal drugs or controlled substances in the last seven years. He

again intentionally provided false information during his June 2019 background interview when he stated that he did not use illegal drugs of any kind. AG ¶¶ 16(a) and 16(b) are applicable.

SOR ¶¶ 1.f and 1.g cross-allege Applicant's methamphetamine and marijuana use. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the drug involvement and substance misuse guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

SOR ¶ 1.h cross-alleges that Applicant "intend[s] to use marijuana in the future." That information is a valid allegation under the drug involvement and substance misuse guideline, but it does not allege any additional personal conduct that is not already covered under SOR ¶ 1.g. SOR ¶ 1.h is concluded for Applicant.

SOR ¶ 1.a alleges Applicant's "pattern of compulsive and high risk sexual behavior from 1992 until at least 2022." SOR ¶ 1.b alleges that Applicant sexually assaulted his wife in 2011 and 2012. Applicant's conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the sexual behavior guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

SOR ¶¶ 1.c, 1.d, and 1.e cross-allege that Applicant received counseling and treatment and was diagnosed with certain conditions. Counseling is a mitigating factor. It does not raise a personal conduct disqualifying condition. The diagnoses may be valid allegations under the psychological conditions and drug involvement and substance misuse guidelines, but they do not constitute personal conduct by Applicant. SOR ¶¶ 1.c, 1.d, and 1.e are concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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 engaged in problematic conduct for more than three decades. Some of his conduct was criminal, ranging from relatively minor (sex in public, illegal drugs), to moderate (lying on SF 86 and during background interview in violation of 18 U.S.C. § 1001), to serious (sexual assault). He used illegal drugs while holding a security clearance, lied about it on two occasions, and only came clean when he realized that his psychiatrist knew about his illegal drug use and the DoD had sought his medical records. He then continued to use illegal drugs and have indiscriminate high-risk sexual encounters. I am unable to find that problematic conduct is unlikely to recur. His conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions, individually or collectively, are sufficiently applicable to overcome Applicant's three decades of problematic conduct.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

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

Applicant possessed and used methamphetamine and marijuana. He was diagnosed by his treating psychiatrist with amphetamine-type use disorder, in sustained remission; and cannabis use disorder, mild. He told a background investigator in January 2022 that he would continue to use marijuana but would stop if he was required to for his employment or security clearance. In his February 2023 response to interrogatories, he wrote that he was using marijuana about once or twice a week, but that, "If required, in order to regain my clearance, I would be willing to give it up." AG ¶¶ 25(a), 25(c), 25(d), and 25(g) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

The analysis under personal conduct also applies here. Applicant used illegal drugs while holding a security clearance, lied about it on two occasions, and only came

clean when he realized that his psychiatrist knew about his illegal drug use and the DoD had sought his medical records. He then continued to use illegal drugs until April 2023.

I am unable to find that illegal drug use is unlikely to recur. Applicant's drug involvement continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficient to mitigate the drug involvement security concerns.

Guideline D, Sexual Behavior

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant has been involved in a series of compulsive, high-risk sexual encounters with consenting adults since about 1992. He met the individuals in hotels, houses, public restrooms, public parks, and adult bookstores. He stopped using public places in about 2014. He concealed his behavior from his then wife and other individuals until about 2010. He sexually assaulted his then wife in about 2011 and 2012. All the above disqualifying conditions are applicable.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following are potentially applicable:

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

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress;

(d) the sexual behavior is strictly private, consensual, and discreet; and

(e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Applicant blamed his sexual assaults on a misdiagnosis and improper medication. He received a proper diagnosis in 2014 and different medication. There is no evidence of any additional sexual assaults since 2012, but the compulsive, self-destructive, high-risk sexual behavior continued until he married in October 2023. Applicant has received treatment for years, but the sexual assaults are too serious, and the other problematic sexual behavior too recent, to consider his sexual behavior mitigated. None of the mitigating conditions fully apply.

Guideline I: Psychological Conditions

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

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

AG ¶ 28 provides conditions that could raise security concerns. The following is potentially applicable in this case:

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

SOR ¶ 3.a cross-alleges SOR ¶¶ 1.c, 1.d, and 1.e. SOR ¶ 1.c alleges that Applicant “received counseling for sexual addiction and marital issues” from 2012 to 2014. That does not raise a disqualifying condition under Guideline I. The language in SOR ¶ 3.a referencing SOR ¶ 1.c is concluded for Applicant.

AG ¶ 28(b) requires 1) an opinion by a duly qualified mental health professional that the individual has a condition; and 2) that the condition may impair judgment, stability, reliability, or trustworthiness. Some conditions, such as schizophrenia and delusional disorder (not present in this case) clearly impair judgment, stability, reliability, and trustworthiness, and by their very nature raise security concerns, and can be accepted as such without further elaboration by the mental health professional: Other conditions may require elaboration by the mental health professional as to how the condition may impair the individual’s judgment, stability, reliability, or trustworthiness.

Bipolar II disorder falls into the category of conditions that by their very nature raise security concerns. *See, e.g., USAF-M Case No. 23-00056-R at 3 (App. Bd. Jan. 4, 2024).* AG ¶ 28(b) is applicable to the diagnosis of bipolar II disorder.

While not listed among the seven per se psychological diagnoses that raise security concerns, amphetamine-type use disorder and cannabis use disorder impair judgment, stability, reliability, and trustworthiness because the diagnoses stem from Applicant’s involvement with illegal drugs. AG ¶ 28(b) is applicable to those diagnoses.

Absent elaboration by the psychologist or another mental health professional that adjustment disorder and fetishistic disorder may impair judgment, stability, reliability, or trustworthiness, I am unable to find AG ¶ 28(b) applicable to those diagnoses. The language in SOR ¶ 3.a referencing those diagnoses is concluded for Applicant.

AG ¶ 29 provides conditions that could mitigate security concerns. The following 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.

Applicant does not dispute that he has bipolar II disorder. He blamed his sexual assaults on a misdiagnosis and improper medication. He received a proper diagnosis of bipolar II disorder in 2014 and different medication. There is no evidence of any additional sexual assaults since 2012, but he has no excuse for all the problematic and criminal behavior that came after 2014. I found Applicant's psychological evaluation to be helpful. I tend to believe most of the psychologist's findings, except for his finding that "based on the available data and given his current mental status and track record of successfully managing a clearance in the past, it is unlikely that any of his conditions could negatively impact his reliability, trustworthiness, or judgment while working in a cleared setting or around classified information." I could not disagree more with that opinion. Three months of monogamy without problematic conduct was enough to sway the psychologist. Thirty years of problematic conduct is enough to convince me that Applicant's psychological issues are not yet mitigated.

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E, D, H, and I in my whole-person analysis. I also considered Applicant's favorable character evidence. However, Applicant engaged in problematic conduct, including criminal conduct, for 30 years. He lied to the DoD on two occasions, only came clean because he thought the DoD would discover his illegal drug use, and then continued with additional misconduct.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines E, D, H, and I.

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 E:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant
Paragraph 2, Guideline D:	Against Applicant
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline I:	Against Applicant
Subparagraph 3.a:	Against Applicant (except for the language referencing SOR ¶ 1.c and the language referencing adjustment disorder and fetishistic disorder, which is found For Applicant)
Paragraph 4, Guideline H:	Against Applicant
Subparagraphs 4.a:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge