



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



In the matter of:)
)
) ISCR Case No. 22-02556
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. White, Esquire, Department Counsel
For Applicant: Bradley P. Moss, Esquire

04/18/2024

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding drug involvement and substance misuse but failed to mitigate the security concerns regarding alcohol consumption. Eligibility for a security clearance is denied.

Statement of the Case

On February 15, 2022, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories, and also asked him to verify the accuracy of an investigator’s summary of an interview. He responded to those interrogatories and verified the summary on January 9, 2023. On January 20, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4),

National Security Adjudicative Guidelines (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline H (drug involvement and substance misuse) and detailed reasons why the DCSA CAS adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a statement, dated February 17, 2023, Applicant responded to the SOR, and he requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 14, 2023. The case was assigned to me on September 11, 2023. A Notice of Hearing was issued on October 17, 2023, scheduling the hearing for November 14, 2023. I convened the hearing as scheduled. During the hearing, Government Exhibits (GE) 1 and GE 2, and Applicant Exhibits (AE) A through AE D were admitted into evidence without objection. One Applicant witness testified, and another witness was in the process of testifying when a medical emergency occurred, and I was unable to continue. All parties were advised of the situation and the remainder of the hearing was postponed. The initial transcript (I-Tr.) was received on November 22, 2023.

Another Notice of Hearing was issued on January 5, 2024, scheduling the remainder of the hearing for January 16, 2024. Unfortunately, a snow emergency interrupted all scheduling as the Government was closed, and the hearing was cancelled. Another Notice of Hearing was issued on January 18, 2024, scheduling the hearing for February 6, 2024. I convened the hearing as scheduled. Applicant and the one witness who was testifying when the initial hearing was terminated both testified. During this hearing, AE E and AE F were admitted into evidence without objection. The remaining transcript (Tr.) was received on February 27, 2024. I kept the record open to enable the parties to supplement it, and Applicant took advantage of that opportunity by submitting additional documents that were marked and admitted as AE G through AE J without objection. The record closed on February 20, 2024.

Procedural Issues

On November 13, 2023, Department Counsel, *sua sponte*, amended the SOR without submitting a motion. Applicant did not object to the amendments, and I requested that he respond in writing to the amended allegations. He eventually did so. Also, during the remaining hearing, on February 6, 2024, pursuant to ¶ E3.1.17 of the Directive, Department Counsel moved to amend the SOR by adding two allegations associated with Guideline G (alcohol consumption):

2.a. You were diagnosed with Alcohol Use Disorder in about June 2023.

2.b. You were admitted to inpatient substance abuse treatment at [an identified facility] on approximately June 20, 2003, and discharged on approximately July 26, 2023.

Applicant objected to the motion as untimely (agreeing to accept such evidence to be considered in the whole-person analysis) but arguing that most of the facts covered by the proposed amendments were expressly known to the Government before the original SOR was issued. He added that the information also is mitigating information that appears in AE A. I noted that the issues were specifically discussed in GE 2 at 5-6, and 11-13, as well as in AE A, both of which were received on November 6, 2023, pursuant to my Case Management Order. Upon consideration of the motion and arguments made by both parties, I denied the motion and marked it as Administrative Exhibit I. (Tr. at 120-121). After the hearing was closed, but during the period that I kept the record open, Department Counsel renewed her motion to amend the SOR.

The Government argued that it must be able to resolve any doubts in favor of the national security and it is imperative that it be allowed to address all security concerns raised by an applicant's behavior or circumstances in the SOR. Therefore, the Government has the right and the obligation to amend the SOR when necessary, so that all issues are addressed. In support of that statement, it cited an Appeal Board decision declaring that SORs are to be "liberally construed and easily amended." (See, e.g., ISCR Case No. 04-08547 at p. 3 (App. Bd. Aug. 30, 2007); and ISCR Case No. 99-0447 at 4 (App. Bd. Jul. 25, 2000)) It added that in order to ensure a full and fair adjudication of cases on their merits, form should not be elevated over substance in determining amendments to the SOR, citing another Appeal Board decision that held that "as long as there is fair notice to the affected party and the affected party has a reasonable opportunity to respond, a case should be adjudicated on the merits of relevant issues and not concerned with pleading niceties." (ISCR Case No. 04-08547 at 3-4 (App. Bd. Aug. 30, 2007). See also ISCR Case No. 99-0447 at 5 (App. Bd. Jul. 25, 2000).) It argued additionally, that even if the derogatory information was already known to the Government and it failed to make an allegation in the original SOR, "an amendment must be allowed because the Government cannot be estopped from national security." (ISCR Case No. 94-0966 at 4 (App. Bd. Jul. 21, 1995); *Halkin v. Helms*, 598 F. 2d 1, 9 (D.C. Cir. 1978). *C.f.* ISCR Case No. 07-00260 (App. Bd. Jan. 24, 2008)).

I reconsidered the Government's motion to amend the SOR for the second time. In Section 22 – Police Record, in his SF 86, submitted on February 15, 2022, Applicant described a stressful situation in February 2016, where Applicant and his wife had been drinking, leading to a verbal altercation and his throwing a glass that broke, leading to his arrest. (GE 1 at 46) In Section 24 – Use of Alcohol, in his SF 86, Applicant reported that in 2020, heavy drinking caused a lot of arguments, and he and his wife were "drinking very heavily." (GE 1 at 52-53) In his Enhanced Subject Interview, conducted by an investigator with the U.S. Office of Personnel Management (OPM) on March 22, 2022, and attached to the interrogatories that were submitted to him to verify the accuracy of the investigator's summary of the interview, Applicant discussed a drinking incident involving the broken glass (GE 2 at 15); consuming alcohol "heavily" during his marriage, causing family issues and marital issues; a DUI arrest in October 2011 that required him

to have an alcohol monitoring system installed on his vehicle for six months; the effect alcohol has on him; and his current drinking habits. (GE 2 at 16-17, 22-24, 29) Although the Government was aware of all of the foregoing alcohol information, the DOHA security specialist focused solely on the drug issues, essentially ignoring any possible alcohol issues.

In response to my first Case Management Order, dated October 16, 2023, Applicant submitted a document from a substance abuse treatment center which stated that Applicant was assessed for substance abuse treatment and admitted for treatment of Alcohol Abuse Disorder. (AE A) On November 14, 2023, Applicant's first witness – his brother-in-law – was aware that Applicant had received inpatient and outpatient substance abuse treatment for what he believed to be alcoholism in May 2023. While they briefly resided together, the witness never saw Applicant intoxicated or under the influence to an unreasonable degree around the children. (I-Tr. at 25, 28-29) In addition, Applicant was treated by a licensed master social worker (LMSW) in late 2023 for a variety of issues including alcohol use recovery, managing stress and anxiety, and setting goals for the future. (AE F)

The characterization of Applicant's alcohol use changed dramatically from the one described in his SF 86, and Enhanced Subject Interview. Throughout college Applicant would binge drink hard liquor multiple times a week. After he was divorced three years earlier, "his drinking picked up to the point of being hospitalized multiple times a year for pancreatitis. At his peak he was drinking a 12 pack of beer a day and sometimes 16-20 beers a day. . . Longest period of sobriety was 1 week." He was diagnosed with Alcohol Use Disorder, Severe. (AE G at 1-2; AE I at 2)

Based on the above, while I did not necessarily agree with all of Department Counsel's arguments, cited above, and I was especially disappointed with the questionable quality and lack of thoroughness of the investigation in this case, after considering the new information regarding Applicant's alcohol consumption, I concluded that there was good cause shown and justification to enable the Government to explore the issue. Accordingly, on February 6, 2024, I reconsidered and granted the Motion to Amend the SOR as previously requested by Department Counsel. Applicant was granted 30 days in which to respond to the new allegations, something he did on April 3, 2024, and both parties agreed that we should proceed on the established record without another hearing.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments (with some changes as to dates), all of the factual allegations pertaining to drug involvement and substance misuse (SOR ¶¶ 1.a. through 1.h.). On February 1, 2024, Applicant responded to the Amended SOR, and once again, admitted (with some changes as to dates) all of the factual allegations pertaining to drug involvement and substance misuse (SOR ¶¶ 1.a. through 1.h.). Although he submitted a Response to the second Amended SOR on April 3, 2024, with extensive comments, Applicant failed to specifically "admit" or "deny" the two allegations pertaining to alcohol consumption (SOR ¶¶ 2.a. and 2.b.), and denials

were accordingly entered. Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Background

Applicant is a 36-year-old employee of a defense contractor. He has been serving as a modeling and simulation principal engineer with his current employer since about January 2022. He was previously employed by various employers in a variety of full-time positions, including senior analyst (April 2021 – January 2022), and senior systems engineer (August 2017 – April 2021). He also held several part-time positions as an adjunct professor, tutor, or systems verification engineer. A 2006 high school graduate, he received a Bachelor of Science in 2010, a Master of Science in 2011, and a Ph.D. in atmospheric science in 2014. He has never served in the U.S. military. He was granted a secret clearance in 2018. He was married in 2015 and divorced in 2021. He has no biological children.

Drug Involvement and Substance Misuse

While a student in college, Applicant occasionally used marijuana, but never purchased the substance. He never used the substance again. (Tr. at 92)

Although Applicant and his wife had been together for several years before marrying, about a year and one-half into their marriage, stress developed over the amount of work-related travel he was doing as well as wedding-related financial issues. Verbal altercations added to the stress, and the relationship became tumultuous and toxic. At about their second-year anniversary, Applicant found out his wife was having an affair with a friend of his best friend. A temporary separation took place while they tried to work things out. But, as Applicant described the situation, "things only went from bad to worse."

She ended up continuing to see this guy, she dropped out of school, wasn't working, and became heavily involved in drugs. The guy she was with was active in the drug scene and I believe this was one of the major reasons she went completely off the deep end. As we continued to attempt to work on our marriage, things continued to get worse and she became fully addicted to drugs, particularly cocaine. She would show up high and with drugs on her and over time, I somehow thought it would help our marriage if I became involved in drug use with her. Obviously, I was going through a lot of depression and mentally compromised and blinded by my love for her and the pain I was feeling, in the short term. It seemed to work (cocaine use), and she would stay with me, but she always ended up going back with this guy. We went through this cycle over and over again, and cocaine became the center of whatever the relationship had become. It almost seemed like the last thing holding us together, so I continued to remain involved in drug use with her, which is how I was justifying the usage. This was the first time in my life I had ever been involved in any way in illegal drugs and have always been adamantly against this type of behavior. The cycle went on for

over a year until I decided to completely remove myself from the situation and ultimately followed through with our divorce. It was a painful, long process as my love for her ran so deep: I did not want to give up on the marriage. However, over time it became obvious how unhealthy the relationship was, particularly with her level of influence over me with the drug use. I never used drugs unless I was with her, and once we split, I have not used or had no desire to use cocaine. It was a desperate attempt to try to hold on to the relationship.

(GE 1 at 49)

On about an estimated half-dozen occasions, Applicant periodically purchased cocaine – a Schedule II Controlled Substance – from about May 2019 to about February 2020, and he used the powdered substance with varying frequency on maybe 100 occasions in their apartment – always with his wife and sometimes with her brother as well – from about May 2019 to about May 2020. During the period of his drug involvement and substance misuse, he was employed in a sensitive position. (GE 1 at 49-51; GE 2 at 2; Answer to SOR; AE E; Tr. at 48-49, 86-87, 91)

On about an estimated half-dozen occasions, Applicant also periodically purchased 3, 4-methylenedioxymethamphetamine (MDMA), also known as Ecstasy – a Schedule I Controlled Substance from about August 2019 to about May 2020, and he used the substance with varying frequency on maybe five times in their apartment from about August 2019 to about May 2020. During this period of his drug involvement and substance misuse, he was employed in a sensitive position. (GE 1 at 50-51; GE 2 at 2; Answer to SOR; AE E; Tr. at 49, 51-52, 84-85, 89-90)

Applicant was divorced in June 2021. (AE D) His future intentions with respect to all drug involvement and substance misuse was described in his SF 86 in February 2022:

Absolutely no addiction and no desire exist to use any type of drug. Now I am free of my toxic marriage, my desire to use drugs does not exist. I've since gotten involved in church again and back to my normal self. That was a really rough stretch during my divorce and very much glad that chapter in my life is closed.

(GE 1 at 50)

Alcohol Consumption

Applicant first tried alcohol around the age of 18 during his senior year of high school. He drank socially throughout college and would binge drink hard liquor multiple times a week. (AE G at 1) While a university student, Applicant usually consumed alcohol every weekend, He would have six beers at football games, as well as unspecified amounts after work or during softball games. In October 2011, after consuming a couple of beers in the afternoon at a fraternity house and another couple of beers at dinner, he was stopped by the police while driving home. He initially claimed that he chose not to

blow into a breathalyzer because he was afraid, he would be close to .08 or slightly above that mark. During the hearing, he stated that he “definitely wasn’t intoxicated.” (Tr. at 71) As a result of his refusal, he was charged and arrested for driving under the influence (DUI) and taken to the local jail. He hired an attorney, and he was offered a plea deal to have a breathalyzer installed in his vehicle for six months. The charge was eventually dismissed, and then expunged from his record. (GE 2 at 22-24)

After his DUI, Applicant continued to consume alcohol for about 13 years, and he did so to the point of intoxication maybe once a month, “depending.” He did not explain the “depending.” (Tr. at 74)

In his SF 86, Applicant reported that his consumption of alcohol resulted in one police-related incident and a subsequent period of heavy alcohol use. In February 2016, he and his wife had been drinking during a period of stress that led to a verbal altercation. He threw a glass, not in her direction, that broke against the wall. His wife called the police and Applicant was arrested and charged with criminal mischief. The charge was eventually dropped. Applicant admitted that they were drinking, but he denied that he was drunk. (GE 1 at 46-47; GE 2 at 15; Tr. at 99-100)

Four years later, during June and July 2020, when COVID-19 was at its peak and Applicant and his wife were residing together trying to reconcile, their heavy alcohol consumption (he initially acknowledged that he consumed a 12-pack of beer every day, but later changed the estimate to not daily, but limited to the period from mid-March 2020 until May 2020) as a coping mechanism in dealing with stress) and COVID-related confinement led to “a lot of arguments” and they again split up for the last time. (GE 1 at 53; GE 2 at 116-17; Tr. at 101, 129) Following the final split-up in May 2020, he temporarily moved in with his sister and brother-in-law. (Tr. at 102)

A May 2023 psychiatric evaluation noted:

[Applicant] has always been a heavy drinker but once he got divorced three years ago his drinking picked up to the point of being hospitalized multiple times a year for pancreatitis. At his peak he was drinking at least a 12 pack of beer a day and sometimes 16-20 beers a day. Denies any prior treatments. Longest period of sobriety was 1 week.

(AE G at 1)

Applicant contends that his sobriety date is April 27, 2023, but during the hearing he acknowledged that prior to entering rehabilitation in May 2023, he was still drinking “a moderate amount daily, but not to excess.” He quantified the amount as two to three drinks per day and maybe a little bit more (maybe six) on weekends. (Tr. at 66, 123, 127) He also disagreed with the rehabilitation facility’s characterization of drinking two or three drinks a day as binge drinking. (Tr. at 130) Nevertheless, he continues to believe that in the past seven years, or ever, that alcohol has not had a negative impact on his professional or personal relationships or his work performance. (Tr. at 67)

Therapy

From December 1, 2020, until September 15, 2021, Applicant received remote therapy – couples counseling that evolved into individual counseling – from a licensed professional counselor (LPC) dealing with intense emotional stress related to a “cyclically unhealthy/tumultuous relationship with his spouse,” complicated by “a dysfunctional pattern of substance use/bingeing by using cocaine. . . that served as sort of toxic-glue keeping the relationship going.” Applicant was not administered any clinical tests that led to any professional conclusions. (Tr. at 133) Clinically, Applicant met the criteria for substance use disorder due to his episodes of bingeing cocaine. He was very active and insightful on his own treatment. The therapist added:

Furthermore, his ability to dissolve an entire marriage based on the insight of the relationship’s unhealthy triggering of substance use patterns provides a true glimpse into an overall positive future prognosis in the maintenance of his own sobriety. Due to his continued sobriety, increased emotional stability and decision not to return to (the state of the marriage) or his past relationships; I feel very confident in his ability to continue to grow beyond this dark chapter in his life and maintain his sobriety. His continuing success is likely dependent on his ability to maintain effective interpersonal support systems, engagement in a minimum of once monthly outpatient appointments and attendance of support groups in his area.

(AE C)

From May 11, 2023, until July 26, 2023, Applicant received in-person substance abuse treatment from a licensed substance abuse counseling facility. He took part in daily day long therapeutic activities, group therapy, individual therapy, psycho-educational groups and lectures, random drug/alcohol screens, Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings, and medication management. He participated in a bio-psycho-social assessment and a psychiatric evaluation to determine the best course of treatment. While he was administered the Patient Health Questionnaire (PHQ-9) which addresses depression, and the screening for Generalized Anxiety Disorder (GAD-7) which addresses anxiety, it is unclear if Applicant was administered any clinical tests that led to any professional conclusions associated with substance abuse. (AE I at 1) He was admitted to treatment for alcohol use disorder, severe, but also reported having struggled with narcotic/illicit substance use in the past, and that he hasn’t used any narcotics since 2020.

Applicant was directed to “completely eradicate alcohol and to build the tools in my arsenal to sustain that sobriety.” (Tr. at 64) He was also expected to participate in a 12-step programming, therapist and/or sponsor, sober support network, accountability, holistic activities, readings, prayer, medications, all on a daily basis and avoiding outfalls such as distractions and complacency. (AE I at 2) Despite those expectations, Applicant doesn’t particularly like going to AA meetings and dedicating an hour of every day to talking about alcohol when, in his mind, alcohol “is the past.” (Tr. at 68) Furthermore, he considers alcohol to be a part of his “previous life.” (Tr. at 70) Accordingly, he went to AA

only a few times and believes he obtained a sponsor, but he disagreed with the philosophy of literally having someone talk about sobriety every day. (Tr. at 126)

The final diagnoses were, among other issues, alcohol use disorder, severe; and alcohol induced acute pancreatitis without necrosis or infection. He fulfilled all treatment recommendations, met all treatment goals and objectives, continued to test negative on all random drug/alcohol screens, showed no signs of continued use, and was discharged for having successfully completed all prescribed treatment. His case manager/counselor – a certified substance abuse counseling assistant (CSAC-A) – indicated that Applicant had adequately addressed his issues with substance use disorder, met 85% of his treatment goals, demonstrated the ability to utilize the relapse prevention skills he learned in treatment, and made above average progress. (AE A; AE J at 2) He was recommended to attend a 12-step program, attend 90 meetings, obtain a sponsor, and obtain a home group. (AE J at 2)

From January 13, 2023, until July 14, 2023, Applicant received therapy for “mental health conditions,” not otherwise described, from a resident in counseling, under the supervision of a licensed professional counselor. It is unclear if the four sessions he participated in were in-person meetings or remote sessions; what mental health conditions were being addressed; and if Applicant was administered any clinical tests that led to any professional conclusions. No diagnosis or prognosis was given. (AE B; Tr. at 59-61)

From September 25, 2023, until November 7, 2023, Applicant received therapy and medication management from a licensed master’s level social worker (LMSW) – a nonclinical social worker providing services under the supervision of a licensed clinical social worker – for several different conditions: alcohol use recovery, managing stress and anxiety, and setting goals for the future. It is unclear if Applicant was administered any clinical tests during their weekly meetings that led to any professional conclusions. Applicant consistently reported that he had not used alcohol or drugs while in this program, and that he did not experience any drug cravings. He set goals to continue to improve his mental, emotional, and physical wellbeing and had accomplished several of those goals, not otherwise identified, while in treatment. No diagnosis or prognosis was given. (AE F; Tr. at 68-69)

Character References and Work Performance

Applicant’s brother-in-law has known Applicant since 2015 when he married Applicant’s sister. The witness and Applicant and his ex-wife interacted infrequently, maybe twice a year, but after the divorce they resided together shortly, and they now converse weekly by phone. Although he never observed Applicant purchase or use drugs, he became aware of Applicant’s drug use in 2020 during a rocky time during Applicant’s marriage. He also knew that Applicant put himself through rehabilitation in May 2023 for alcohol use. “[Alcohol use has been] an issue with the family for a long time.” He has no concerns about Applicant using drugs in the future or being around children because of his past drug use. (I-Tr. at 18-29)

Applicant's former college roommate has known him since 2007. Most of Applicant's alcohol consumption occurred in social settings. Since graduating in 2010, they have seen each other a couple of times per year. Aside from an occasional use of marijuana while they were in college, he has never seen Applicant use any illegal substances. When Applicant was going through marital difficulties, and trying to salvage the marriage, he acknowledged that his ex-wife had introduced him to cocaine. He considers Applicant's drug use to be a lapse in judgment at the time. Applicant had a problem with alcohol. He told him that he was going to enter a rehabilitation program in May 2023, and that he made a choice to completely stop drinking. To his knowledge, Applicant has been completely sober since May 2023. (Tr. at 5-30)

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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)). "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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. 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).)

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse 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.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

The guideline notes some conditions under AG ¶ 25 that could raise security concerns in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including . . . purchase. . .;
- (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
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant was granted a security clearance in 2018, and he has held sensitive positions since that time. Because of stress in his tumultuous and toxic marriage, and in an effort to repair his relationship with his substance-abusing wife, during the period from about May 2019 through May 2020, he periodically purchased and used cocaine and MDMA with her. Cocaine became the center of whatever relationship they had until the relationship ended with their separation and eventual divorce. He subsequently voluntarily underwent several professional relationships with licensed medical and mental health professionals and was found to have met the criteria for a diagnosis of substance use disorder. AG ¶¶ 25(a), 25(c), 25(d), and 25(f) have been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

(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 or misuse is grounds for revocation of national security 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.

AG ¶¶ 26(a), 26(b), and 26(d) apply. Applicant desperately tried to hold his marriage together although his wife was in a continuing sexual relationship with another individual and she became fully addicted to drugs, particularly cocaine. Depressed and mentally compromised, as well as blinded by his love for her, Applicant somehow thought it would help their marriage if he became involved in drug use with her. The joint cocaine use seemed to work temporarily, and she would stay with him, but she always ended up going back to her lover. The cycle repeated itself several times until he realized that cocaine became the center of their relationship and was the last thing holding them together. He finally decided to completely remove himself from the situation. Separation and the June 2021 divorce followed. Applicant was candid about his involvement with drugs when he reported it in his SF 86 and spoke openly about it with investigators and health care providers. He enrolled in a variety of therapy and substance abuse treatment programs, successfully completed those programs, and has been abstinent from any illegal drug use since May 2020 – nearly four years. He has no continuing relationship with his ex-wife and has no desire to use drugs in the future. His relatively limited one-year period of involvement with illegal drugs no longer casts doubt on his current reliability, trustworthiness, and good judgment.

Guideline G, Alcohol Consumption

The security concern relating to the guideline 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 guideline notes several conditions that could raise security concerns for Alcohol Consumption in AG ¶ 22:

- (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.

Applicant has been consuming alcohol since he was a senior in high school. He drank socially throughout college and would binge drink hard liquor multiple times a week. While a university student, he usually consumed alcohol every weekend with six beers at football games, as well as unspecified amounts after work or during softball games. His alcohol consumption resulted in two incidents in which the police were involved. In October 2011, after consuming four beers, he was stopped by the police while driving home. As a result of his refusal to blow into the breathalyzer, he was charged and arrested for DUI. As part of a plea deal, he had a breathalyzer installed in his vehicle for six months. He denied that he was intoxicated at the time. The charge was eventually dismissed, and then expunged from his record. He continued to consume alcohol for about 13 years, and he did so to the point of intoxication maybe once a month.

In February 2016, he and his wife had been drinking during a period of stress that led to a verbal altercation. He threw a glass that broke against the wall. His wife called the police and Applicant was arrested and charged with criminal mischief. The charge was eventually dropped. Applicant admitted that they were drinking, but he denied that he was drunk. During June and July 2020, when COVID-19 was at its peak and Applicant and his wife were residing together trying to reconcile, their heavy alcohol consumption as a coping mechanism in dealing with stress and COVID-related confinement led to “a lot of arguments.” Applicant initially acknowledged that he consumed a 12-pack of beer every day during that period, but later changed the estimate to not daily, but limited to the period from mid-March 2020 until May 2020.

Applicant engaged the professional services of various medical and mental health providers to address his issues, some of which had no association with substance abuse. The most intensive focused program was the one that specifically addressed substance abuse and alcohol abuse. He was admitted to treatment for alcohol use disorder, severe, but also reported having struggled with narcotic/illicit substance use in the past, ending in

2020. The final diagnoses were, among other issues, alcohol use disorder, severe; and alcohol induced acute pancreatitis without necrosis or infection. Applicant was directed to “completely eradicate alcohol and to build the tools in my arsenal to sustain that sobriety.” He was also expected to participate in a 12-step programming, therapist and/or sponsor, sober support network, accountability, holistic activities, readings, prayer, medications, all on a daily basis and avoiding outfalls such as distractions and complacency. However, because he considers alcohol to be a part of his “previous life,” he went to AA only a few times and disagreed with the philosophy of literally having someone talk about sobriety every day.

As noted above, Applicant contends that his sobriety date is April 27, 2023, but during the hearing he acknowledged that prior to entering rehabilitation in May 2023, he was still drinking “a moderate amount daily, but not to excess.” He quantified the amount as two to three drinks per day and maybe a little bit more (maybe six) on weekends. A May 2023 psychiatric evaluation noted that Applicant has always been a heavy drinker but “once he got divorced three years ago his drinking picked up to the point of being hospitalized multiple times a year for pancreatitis. At his peak he was drinking at least a 12 pack of beer a day and sometimes 16-20 beers a day.” It added that his longest period of sobriety was one week. AG ¶¶ 22(a), 22(c), 22(d), 22(e), and 22(f) have been established.

The guideline also includes examples of conditions under AG ¶ 23 that could mitigate security concerns arising from Alcohol Consumption:

(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; and

(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.

Neither of the mitigating conditions apply. Applicant fulfilled all treatment recommendations, met all treatment goals and objectives, continued to test negative on all random drug/alcohol screens, showed no signs of continued use, and was discharged for having successfully completed all prescribed treatment. Nevertheless, he appears to be minimizing his alcohol consumption and the impact it has had on his life, and he has never acknowledged that there was a significant long-standing pattern of maladaptive alcohol use. He initially indicated that his consumption of alcohol was some time ago and was no longer of any significance. He suggested that there was no pattern since the DUI was in 2011 (he denied being intoxicated) and had not been repeated, and his 2017 glass-throwing incident did not involve intoxication, but merely the consumption of alcohol. He acknowledged that during June and July 2020 his alcohol consumption was a coping mechanism in dealing with stress and COVID-related confinement which led to a lot of arguments. He initially acknowledged that he consumed a 12-pack of beer every day

during that period, but later changed the estimate to not daily, but limited to the period from mid-March 2020 until May 2020. But Applicant's consumption of alcohol did not cease when he and his wife split up for the final time. He acknowledged that prior to entering rehabilitation in May 2023, he was still drinking "a moderate amount daily, but not to excess," which he quantified as two to three drinks per day and maybe a little bit more (maybe six) on weekends. However, his May 2023 psychiatric evaluation noted that Applicant has always been a heavy drinker but "once he got divorced three years ago his drinking picked up to the point of being hospitalized multiple times a year for pancreatitis. At his peak he was drinking at least a 12 pack of beer a day and sometimes 16-20 beers a day." It added that his longest period of sobriety was one week.

Applicant failed to address inconsistencies in the evidence regarding alcohol abuse and failed to demonstrate a clear and established pattern of abstinence. Moreover, he failed to fully comply with the post-treatment recommendations and disagreed with the rehabilitation facility's characterization of drinking two or three drinks a day as binge drinking. He continues to believe that in the past seven years, or ever, alcohol has not had a negative impact on his professional or personal relationships or his work performance.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

I have incorporated my comments under Guideline H and Guideline G in my whole-person analysis, and I have considered the factors in SEAD 4, App. A. After weighing the disqualifying and mitigating conditions under Guideline H and Guideline G, and evaluating all the evidence in the context of the whole person, I conclude that Applicant proffered substantial mitigating evidence, which was more than sufficient to overcome the

disqualifying conditions established under Guideline H. During the period from about May 2019 through May 2020, because of stress in his tumultuous and toxic marriage, and in an effort repair his relationship with his substance-abusing wife, he periodically purchased and used cocaine and MDMA with her. Cocaine became the center of whatever relationship they had until the relationship ended with their separation and eventual divorce. He subsequently voluntarily underwent several professional relationships with licensed medical and mental health professionals and was found to have met the criteria for a diagnosis of substance use disorder. He has not used any illegal drugs since they split up and has been abstinent from such substances for nearly four years. His desperate actions during that relatively brief period of his life in attempting to save his marriage are considered aberrant behavior on his part.

However, Applicant's long-standing and substantially more recent involvement with alcohol under Guideline G raised substantially more serious issues in the context of the whole person. Moderate consumption did not cease in 2020 once the marriage was terminated. Instead, perhaps substituting alcohol for drugs, his drinking increased to the point of being hospitalized multiple times a year for pancreatitis. At one point he was drinking at least a 12 pack of beer a day and sometimes 16-20 beers a day. His longest period of sobriety was one week. It is also significant that while he successfully completed treatment, he failed to fully comply with all the recommendations for after-care, and he has disagreed with the professionals as to what constitutes binge drinking.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has successfully mitigated the security concerns arising from his drug involvement and substance misuse but failed to mitigate the security concerns arising from his alcohol consumption. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

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 H:	FOR APPLICANT
Subparagraphs 1.a. through 1.h.:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge