



DEPARTMENT OF DEFENSE

DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:)
)
) ISCR Case No. 22-01444
)
 Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
 For Applicant: Carl Marrone, Esq

08/26/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant’s evidence in mitigation is insufficient to overcome the continuing security concerns based on the guidelines for drug involvement, and personal conduct. The guideline for psychological conditions is mitigated. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On July 9, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIPs) to obtain security clearance eligibility required for his position with a defense contractor. On August 26, 2020, Applicant provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not render affirmative findings required to grant a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated

October 24, 2023, detailing security concerns raised by the guidelines for psychological conditions (Guideline I), drug involvement (Guideline H), and personal conduct (Guideline E). The action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992, as amended (Directive)), and the adjudicative guidelines (AG), effective in the DOD on June 8, 2017.

On January 22, 2023, Applicant provided an answer to the SOR. He denied SOR ¶ 1.a, contending that there was no actual suicide attempt, but rather thoughts concerning the attempt. He denied his hospitalization in October 2021 (SOR ¶ 1.g) was involuntary. He denied the statement by the Government psychologist (SOR ¶ 1.h) that his current support structure may also constitute a risk factor in the future for maladaptive behavior. He admitted the remaining allegations of SOR ¶ 1. He admitted both drug involvement allegations under ¶ 2. In his responses to the four personal conduct allegations under SOR ¶ 3, he declared that although his omissions were unintentional, he wanted a chance to explain.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 8, 2023, for a hearing on February 13, 2024. The hearing was held via Teams teleconference services as scheduled. The Government's eight exhibits, (GE) 1 through 8, were entered into evidence without objection. (Tr. 18) A stipulation was entered between the parties agreeing that Applicant has had a security clearance since September 30, 2010. As a result, GE 9 was not admitted into the record. Applicant's 15 exhibits, AE A through O, were admitted into evidence without objection. (Tr. 19) On February 29, 2024, Department Counsel indicated no objection to Applicant's five post-hearing character statements (AE P), and they were entered into evidence. I have taken administrative notice of excerpts from the fifth edition of the *Diagnostic Manual of Mental Disorders* (DSM-5), specifically adjustment disorders, major depressive disorders, post-traumatic stress disorders, borderline personality disorders, bipolar and related disorders, and substance-related and addictive disorders.

DOHA received the hearing transcript (Tr.) on February 29, 2024, and the record closed the same day.

Findings of Fact

Applicant is 39 years old. After divorcing his first wife in August 2016, he married his second wife in May 2021 and has a six-year-old daughter. (Tr 96; GE 3 at 3; AE D at 2) Applicant received college credits between September 2001 and June 2003, but no diploma. He earned an associate's degree in cybersecurity from a community college in December 2020. (Tr. 94; GE 1 at 11-12; AE L; AE M)

Applicant served in the United States Navy (USN) from April 2010 until his discharge in January 2014, originally under Other than Honorable Conditions, then

upgraded to a General Discharge under Honorable Conditions. (GE 1 at 15, 18) Though his July 2020 security clearance application reflects that he worked for a private contractor as a computer systems specialist from April 2015 to July 2020, he testified that he was employed as an electrician by a federal agency from May 2015 to May 2016. This employment is not listed in his July 2020 security clearance application, though he testified that he worked for several contractors after his military discharge in 2014. Since 2019, he has been working as a data center manager for a contractor that does work for the United States Coast Guard. (GE 1 at 13-14; Tr. 22, 60-63, 95)

The SOR lists eight allegations under **Guideline I**. They are:

SOR ¶ 1.a – In about 1999, Applicant tried to commit suicide by placing a belt around his neck and jumping from a balcony, but the belt broke. Government documentation in three locations cite this incident. (GE 5 at 1; GE 6 at 28, 127) Applicant denied the allegation and explained that it amounted to a suicidal ideation and not a suicide attempt. He also claimed there was no evidence, i.e., ligature marks on his neck, to support the allegation. In February 2024, Applicant's mother indicated by character reference that Applicant never tried to commit suicide at age 14 or at any other time during his youth. (Tr. 24, 98-100; AE P at 4)

SOR ¶ 1.b – There were several events occurring ahead of Applicant's November 2012 inpatient treatment that he believed explained the reason for his hospitalization. During his boot camp in April 2010, Applicant's fellow service member, who he became friendly with because of the similarity in their backgrounds, committed suicide. The event had a profoundly emotional effect on him. (Tr. 25-27) During his deployment overseas from September 2011 to August 2012, he volunteered for the mortuary service-section of his unit. In April 2012, Applicant lost a second fellow service member friend to suicide. This incident was unforgettable because Applicant had to prepare and stand guard over the body of the service member friend until it was shipped to the United States. A contractor friend recognized Applicant's sadness over his friend's death, and they consumed a few beers to help Applicant cope with the loss. This was the first time that Applicant consumed alcohol. The alcohol also helped him sleep. (Tr. 29-33)

Applicant returned from deployment in August 2012. His fellow sailors viewed his overseas assignment as a vacation, despite the evaluation reports showing the bona fide nature of those assignments during his deployment. In addition, he received a message from a nationwide relief organization that his grandfather had cancer. Unidentified members of the command thought the message was a fabricated opportunity by Applicant to evade duty, and he became upset. Either the leading petty officer (LPO) or the second in command (XO) recommended that he seek medical attention. He reported that he took the pills and spent five days in inpatient treatment in November 2012. His treatment at the military hospital did not go well, as Applicant sensed that the focus of his treatment was directed at returning him to his unit rather than treating his mental condition. The medical records show that he was involuntarily

admitted for inpatient treatment with more than three months of depressive symptoms intensified by the loss of friends in his life. His diagnosis was a mixed personality disorder (SOR ¶ 1.b; GE 7 at 36-42; Tr. 33-41)

During aftercare, he ran out of the medications that he was prescribed. To ease his fluctuating anxiety, he began smoking marijuana in early November 2013 with his first spouse. Two weeks later, he reported for another command assignment. On November 15, 2013, he took a urinalysis, which was customary protocol for sailors reporting to a new command. (GE 2 at 4; Tr. 43) Applicant's anxiety increased because he had not been informed about his job assignments at his new command. On December 13, 2013, he was informed that he failed the November 2013 urine test. Even though he was taken to Captain's Mast, he avoided more serious punishment when the command released him with a warning after he asserted that he had only used marijuana once, and would not use the drug again. (GE 2 at 4-5)

SOR ¶ 1.c – At a later date in December 2013, Applicant was reassigned to another command and took a second urinalysis test within 20 days of having taken the first one in November 2013. He failed the second test. He explained to the command that the marijuana that he used in November 2013 was still in his system. The command did not believe him, and he was found guilty of Article 112 (illegal drug use) of the Uniform Code of Military Justice (UCMJ). (GE 2 at 4)

Also, after Applicant arrived at his new facility in late December 2013, his command noticed his erratic behavior and advised him to seek inpatient treatment at a military hospital for suicidal ideations. His discharge diagnosis after inpatient treatment was adjustment disorder with depressed mood. (GE 5 at 2-4, 21; Tr. 43-48)

During his December 2013 treatment, Applicant believed that the medical officials were receptive to the information he provided about his condition. However, during a discussion with a prescriber about treatment, the prescriber took a phone call that Applicant interpreted as disrespectful interruption of their discussion, and demonstrated to him that she was not serious about his mental state. Upon leaving the prescriber's office, Applicant attempted suicide by cutting his wrists with a belt buckle. The prescriber apologized but explained the phone call was from Applicant's command inquiring when he was going to be released back to the command. The chronology of events reinforced Applicant's opinion that his command's goal was to return the service member to his unit rather than treating the member until his mental issues were completely resolved. (Tr. 48-52)

In January 2014, Applicant was administratively separated from the Navy with a discharge under other than Honorable Conditions. On July 30, 2019, the discharge was upgraded to a General Discharge under Honorable. Conditions. (AE G)

SOR ¶ 1.d – In December 2014, Applicant received inpatient treatment at a Veteran's Affairs (VA) medical center for suicidal ideations. His admission diagnosis

was major depressive disorder, post-traumatic stress disorder (PTSD), alcohol use disorder (moderate), cannabis use disorder (mild), and borderline personality traits. (GE 6 at 97) During treatment, he cut his wrist with a belt buckle. His discharge diagnosis was major depressive disorder, post-traumatic stress disorder (PTSD), cannabis use disorder and borderline personality traits. (GE 6 at 1) The remainder of the exhibit confirm various contacts he had with psychologists, nurses, and case managers during treatment and aftercare. (GE 6 at 8-167)

Applicant received inpatient treatment at a VA facility in December 2014 (SOR ¶ 1d) because he felt guilty in not appreciating his wife's overtures of support earlier in the year of 2014. Before his admission for the December 2014 hospitalization, lack of access to the VA made him feel like he was not veteran. He believed that he had failed his country and himself because he always wanted to be a career sailor. After making several calls to treatment clinics, he entered his car and was driving on a road trying to decide a location where he would end his life. Fortunately, an attendant from an outpatient clinic that he had called earlier, escorted him to the VA medical center. (Tr. 55-58)

SOR ¶ 1.e: Applicant's inpatient treatment in January 2021 was for suicidal ideations. SOR ¶ 1.f: His inpatient treatment in June 2021 was for anxiety and depression. SOR ¶ 1.g: His inpatient treatment in October 2021 resulted from cutting his wrists.

Applicant believed the three VA hospitalizations were related to his third friend's suicide in June 2020. This is the same individual who consoled Applicant over beers in April 2014 after his second friend committed suicide (Tr. 31), and who helped Applicant obtain federal employment in May 2015 (Tr. 60). His treatment at the VA in January 2021 (SOR ¶ 1.e) was not successful because of his dissatisfaction with the VA medical care and medications. The onset of his depression was partially due to apparent VA administrative mismanagement in accommodating his request for assignment to a new mental health care team. (GE 3 at 2; Tr. 63, 71)

In June 2021 (SOR ¶ 1.f), Applicant received inpatient treatment for anxiety and depression due to losing several family members to the COVID-pandemic. (GE 3 at 2; GE 8 at 68; Tr. 77)

In October 2021 (SOR ¶ 1.g), Applicant was hospitalized for cutting his wrists. He remembered he drove to a bridge and began cutting his arm with some kind of weapon. An officer approached him and asked him to drop the weapon or the officer would discharge his firearm. When the officer asked him whether he wanted help, Applicant replied that he did. The officer put him in an ambulance handcuffed and took him to a VA medical facility. He remained in inpatient for 72 hours. Applicant quibbled with whether his hospitalization was involuntary because he has always voluntarily sought treatment. (GE 2 at 5; Tr. 78-82) The officer probably put Applicant in handcuffs for his own protection.

Applicant does not believe the episodes will recur in the future because he has been in therapy treatment for the for more than two years with a family nurse practitioner (FNP). Applicant also provided testimony about the regular therapy and counseling he has received since his last hospitalization in 2021. He faithfully maintains his therapy and treatment because he wants to provide stability and security for his daughter. He has consistently complied with his medication regimen. He has regular interaction with his spiritual counsel. He belongs to a veterans skateboard organization that helps veterans cope with stress. He stopped using marijuana and alcohol in June 2023. (GE 3 at 2, 5;Tr. 82-89, 145-149)

SOR ¶ 1.h – In May 2022, a licensed psychologist (Dr. L) was hired by DCSA CAS (formerly DOD CAF) to conduct an evaluation and issue a report, including a prognosis, on whether Applicant has a mental condition that could impair his judgment reliability, or trustworthiness. Dr. L reviewed mental health records in GE 5, 6, 7, an 8, along with Applicant’s most July 2020, e-QIP. I was unable to identify the investigatory activity Dr. L reviewed on March 29, 2021. Dr. L conducted a clinical interview through direct observation of Applicant and administration of the Personality Assessment Inventory (PAI).

Dr. L evaluated Applicant on May 23, 2022, and rendered a report on June 2, 2022. (GE 3) The psychological results of the PAI suggested Applicant’s unhappiness and mood issues, and his need for psychological and psychiatric assistance. His clinical profile suggested strained working relationships, notwithstanding his positive picture of his current working relationships. The PAI test results suggested no alcohol or drug abuse or dependence. The FNP advised Dr. L that she has been consulting with Applicant since July 2021. She noted that his past marital discord contributed to his past depressive episodes, but reported that the marital relationship had improved dramatically. She informed Dr. L that Applicant’s prognosis is stable and she does not believe his condition will deteriorate as long he continues taking his medication. (GE 3 at 4-5)

Based on her overall evaluation, Dr. L described Applicant as a polite person, “and appeared to be honest and sincere regarding his significant depression, anxiety, suicidal, substance abuse, and non-suicidal self-injury history...His mood and symptoms may fluctuate with the current state of his relationships, and he is not likely to become immune from thoughts of suicide in the future.” Dr. L concluded that the long-term effectiveness of Applicant’s medication is ambiguous because only seven months have passed since his last suicide attempt. Because his judgment has been poor in the past, his current judgment was deemed to be only fair. According to the DSM-5, his bipolar and personality disorder expose him to suicide more than 15 times that of the general population. Applicant’s positive support system contributes to a positive prognosis but, because of his maladaptive personality and pattern of unstable relationships, the positive support system can become a risk factor for maladaptive behavior in the future. (GE 4 at 4-5)

On April 18 and 19, 2022, Applicant was evaluated by Dr. M to determine whether there was a clear connection between his mental health and his marijuana use, which led to his discharge from the USN under less than Honorable Conditions. At Dr. M's direction, at least nine psychological tests were conducted on Applicant. (AE D at 1-2) Dr. M reviewed medical and counseling records dated from October 2010 to November 2020. She conducted a clinical interview of Applicant. (AE D at 1-2) There is no indication that Dr. M reviewed medical records from the VA for Applicant's three inpatient treatments in 2021. (SOR ¶¶ 1.e, 1.f, and 1.g) Dr. M's reference to Applicant's 6 hospitalizations in 2021 is incorrect as he was not hospitalized six times in 2021, but six times since 2013. The next portion of the paragraph is accurate about Applicant consulting a therapist every two weeks since 2021. However, there is no indication or implication that Dr. M actually reviewed medical records for 2021. (AE D at 11)

On one psychological test, Applicant's symptoms of depression and stress were in the mild range, while his anxiety was in the severe range. His results on the PAI did not suggest efforts to distort the results, indicating that he answered the questions honestly. (AE D at 3) The results in Applicant's Minnesota Multiphasic Inventory (MMPI-2) displayed clinically significant anxiety. (AE D at 9-10)

During the course of Dr. M's evaluation of Applicant, he informed her that he had discussed a safety action plan for emergency situations with his therapist. Dr. M requested a copy of the plan or a facsimile of the plan. Applicant indicated that he was working on the plan. However, Dr. M did not receive it. (AE D at 11)

Dr. M concluded that there was insufficient information to support a bipolar diagnosis in April 2022. She observed that Applicant's previous diagnosis of anxiety disorder should be labelled PTSD, together with a diagnosis of major depressive disorder, current episode, severe. Dr. M recommended continued increased therapy sessions and regular contact with his psychiatrist. Dr. M also recommended periodic relaxation to relieve stress. Maintaining a healthy diet and regular physical activity was also important. (AE D at 13-18)

In December 2023, Applicant consulted with the FNP for his regular psychiatric evaluation and counseling for PTSD and depression. In January 2024, the FNP indicated in her progress note that Applicant had a history of hospitalizations for depression disorder and PTSD, but had not been hospitalized for at least the last two years. His mood has improved since completing the drug and alcohol courses in September 2023. (AE I, J)

The SOR lists two allegations under **Guideline H**. They are:

SOR ¶ 2.a, 2.b – Applicant initially used marijuana in November 2013 when he smoked the illegal drug with his first wife. His reason for using the drug was the lack of medication when he was transferred to his new command. Later in November 2013, he

took a urine test and received positive results for marijuana in December 2013. His command imposed no NJC punishment when Applicant promised that he would not use marijuana in the future. He claimed that he did not use marijuana again until 2019, and declared to the OPM investigator in August 2020 that in February 2020, he stopped using marijuana and had no intentions for future use. (GE 2 at 5) Those claims were false as he resumed use of the drug some time in 2014 and continued using it until June 2023. (Tr. 66, 124). Applicant considered his use of marijuana was motivated by medical rather than recreational reasons. He used the drug because of its positive effect on his stomach and sleep issues. Initially, friends would give him the drug, then he began purchasing the drug. (Tr. 65-67) He obtained a medical marijuana card in 2021 to medicate his PTSD. (Tr. 126) In September 2023, Applicant completed a substance abuse program. (AE E) In December 2023, he was administered a hair follicle test. The results were negative for marijuana and four other drugs. (AE F)

The SOR lists four allegations under **Guideline E**. They are:

SOR ¶¶ 3.a through 3.d –On July 9, 2020, Applicant signed and certified an e-QIP. Under Section 23 of the form requiring information about illegal drug activity, illegal drug activity while possessing a security clearance, and psychological events set forth in SOR ¶¶ 1.a through 1.h, Applicant answered “no.” SOR ¶ 3.d is withdrawn because it duplicates the allegation in SOR ¶ 3.a.

In his January 2023 answer to the e-QIP, Applicant indicated the omissions were unintentional because he wanted a chance to explain. If his negative response to the questions was unintentional, then he would have logically nothing to explain unless he was concealing some information. In his August 2020 PSI, he explained that he omitted information about his illegal marijuana use because he did not want to be “pre-judged” and wanted to explain that he did not want to lose his security clearance. (GE 2 at 5)

At the hearing, he was fearful about losing his security clearance and being unable to serve his country. He did not want to be considered a drug user. (Tr. 69-70) Later in the hearing, Applicant considered the reason for omitting the information was a lapse of judgment that he will not repeat in future because of his more focused understanding of providing truthful answers drug the security investigation, and his responsibilities in the security clearance arena. (Tr. 151-153)

Character Evidence

Applicant’s performance evaluation for 2020 demonstrates that he is an excellent communicator and takes pride in his work. He is congratulated for working full time while attending school. (AE K)

Mr. A, a data manager who supervises Applicant, testified that he has known him professionally since April 2023. They interact weekly and through social media.

Because of his diligence and security consciousness, Mr. A hopes Applicant keeps his employment because of his honesty and reliability. (Tr. 154-159)

Mr. B is employed by the United States Air Force (USAF) and has a security clearance. He testified that he has known Applicant for approximately three years. They belong to the same skateboarding organization. Mr. B considers Applicant to be a good person who used marijuana for medical purposes. He is aware of Applicant's bouts of depression, but believes he is receiving the treatment he needs from the VA. His knowledge of the contents of the SOR does not affect Mr. B's favorable opinion of Applicant's honesty and reliability. (Tr. 159-166)

Mrs. C, a budget analyst for the United States Army (USA), testified that she met Applicant three or four years ago when Applicant started dating her niece. Even with her knowledge of the SOR, she still believes Applicant merits a security clearance. Mrs. C has not seen Applicant under the influence of marijuana in over a year. After he completed drug rehabilitation, he began attending church. Mrs. C contacts Applicant periodically to show support for him. (Tr. 167-174)

Mr. F, a regional manager of a mentoring organization, met Applicant in 2019 when he signed up to become a mentor for young men, ages 12 to 18. He mentors individuals through guidance and helping them with their studies. Mr. F's knowledge of the SOR has no effect on his favorable opinion of Applicant's judgment and reliability. Mr. F and Applicant are members of two accountability groups, one 12 members in total and another smaller group, that interact on daily or a quarterly basis to discuss each other's challenges and struggles. Mr. F has seen no sign of Applicant being under the influence of marijuana in the last year. (Tr. 174-180)

Several individuals supplied character statements in support of Applicant. In September 2023, the regional coordinator for veteran services, indicated that when he was a peer specialist between 2016 and 2021, Applicant worked hard to accomplish the mentoring goals set in meetings. In addition to his testimony, Mr. F provided a character statement lauding Applicant's commitment to the youth in the regional community. Mr. G has known Applicant for 20 years and watched him make tough decisions. Mr. G consults him on personal and professional matters. (AE H)

The addiction therapist who issued the certificate of completion by Applicant of the drug treatment program in September 2023 (AE J), provided a character statement attributing Applicant successful completion of the treatment program to his motivation and desire to reach abstinence. (AE O at 1) In two undated letters, two former veterans and current coworkers commended Applicant's work ethic and the sense and stability he brings to his current employment. (AE O at 2 and 3)

On December 2, 2023, Applicant's current spiritual advisor met Applicant in college in 2000. The advisor is impressed with how Applicant has met his personal

challenges. (AE O at 4) A former coworker for two and one-half years, considered Applicant completely trustworthy and dependable. (AE O at 5)

On February 20, 2024, Applicant's aunt furnished a statement indicating that she speaks with Applicant every six weeks. She is confident that he is trustworthy. She has watched him turn his life around by receiving help for his depression. She has not seen him under the influence of marijuana for about a year. (AE P at 1)

Applicant's close friend is a mentor in the same group with Applicant. They worship together. The friend has talked with Applicant about his circumstances. Applicant attends counseling and therapy. (AE P at 2)

Applicant's father, a tax agent, contacts Applicant daily. His father considers Applicant reliable and trustworthy. He has not used marijuana for a while. His father is aware that Applicant lied on the security application. In the last year, Applicant has made positive changes in his life. (AE P at 3)

Applicant's mother is a school teacher. She opined that his life was in turmoil when he returned from deployment in August 2012. In the last year, she has seen positive changes in his lifestyle because he stopped drinking and using illegal drugs. Proving false answers on the security clearance form is customarily not Applicant's response to avoid telling the truth. As noted earlier, Applicant never tried to commit suicide during his youth. (AE P at 4)

Another member of the USN, who served with Applicant, was honorably discharged in November 2015. She has maintained contact with him over the years. She was present when Applicant tried to commit suicide by ingesting the pills in November 2012, and being transferred to the hospital. She concluded that his command did not care about him. He deserves a second chance because of the genuine remorse he has demonstrated for lying on the e-QIP. He has not used marijuana in close to a year. He is closely engaged in counseling and the church. (AE P at 5)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Psychological Conditions

The security concern under the psychological conditions guideline is set forth in AG ¶ 27:

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

The circumstances of this case may raise the following disqualifying conditions under AG ¶ 28:

- (a) behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful exploitative, or bizarre behaviors;
- (b) an opinion by a duly qualified mental health professional that an individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and
- (c) voluntary or involuntary hospitalization.

AG ¶ 28(a) applies to the circumstances of this case due to the suicide ideation that occurred in 1999, and the three suicide attempts between November 2012 and October 2021. Applicant’s behavior raises questions about his judgment and reliability.

AG 28(b) is applicable based on the June 2022 opinion the Government psychologist (Dr. L), a duly qualified mental health professional, that Applicant has a mental condition that may impair his judgment and reliability. In July 2022, Dr. M,

Applicant's mental health professional who is a psychologist, reached the same conclusion that Applicant has a mental condition that may impair his judgment, reliability, and trustworthiness.

AG ¶ 28(c) is applicable to Applicant's voluntary and involuntary and inpatient treatments.

AG ¶ 29. Conditions that could mitigate the security concerns include:

(a) the identified conditions 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 diagnosis by a duly qualified medical professional;

(c) recent opinion by a duly qualified medical 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 and/or 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.

Of the five potentially mitigating conditions, AG ¶¶ 29(a) and 29(b) have some application to the circumstances. AG ¶ 29(a) applies based on Applicant's acceptance of his continuing need for treatment and credible commitment to compliance with his treatment plan. Since his discharge from inpatient treatment in October 2021, he has received regular therapy from an FNP, supplemented by consistent psychiatric counseling. This regular therapy comports with the therapeutic recommendations that Applicant's psychologist (Dr. M) recommended in her July 2022 report.

AG ¶ 29(b) applies to the consistent treatment Applicant has had since July 2021. He provided credible testimony that he is committed to continued treatment and medication to keep his mental condition under control. Though Dr. M conducted more psychological and psychiatric testing of Applicant than Dr. L, the record shows that Dr. L spent a significant amount of time conversing with his FNP about his improvement since his last hospitalization in October 2021. While neither the Government's psychologist (Dr. L) nor the Applicant's psychologist (Dr. M) offered a favorable prognosis, Applicant's FNP told Dr. L that his continued compliance with his medication was

essential to maintain control over his mental condition. The record shows that Applicant has several sources of support, including a spiritual counselor, fellow mentors, his family, friends, and his church, that he can contact should he have a florid episode in the future.

Drug Involvement and Substance Misuse

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth 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.

In my analysis of this case, I have taken administrative notice of the Director of National Intelligence Memorandum (October 25, 2014), *Adherence to Federal Laws Prohibiting Marijuana Use*, which clearly states that state laws do not authorize persons to violate federal laws, including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identifies marijuana as a Schedule 1 controlled drug.

Changes in state laws or the District of Columbia, pertaining to marijuana use do not change the existing National Security Adjudicative Guidelines (Security Executive Agent Directive 4, effective June 8, 2017). An individual's disregard of the federal law pertaining to marijuana involvement remains adjudicatively relevant in national security determinations.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to illegal use, possession, production, and distribution of marijuana. Disregard of federal law relevant to marijuana use (including prior recreational marijuana use) remains relevant, but not determinative to adjudications of security clearance eligibility. Agencies are required to employ the "whole-person concept" stated under SEAD 4, to determine if an applicant's behavior raises a security concern that has not been mitigated.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

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

Applicant's illegal use of marijuana from November 2013 to June 2023, meets the definition of AG ¶ 25(a). In order to use the drug, Applicant had to possess it as defined by AG ¶ 25(c). AG ¶ 25(f) applies because he started using marijuana in November 2013, after he was granted a security clearance or a sensitive position in 2010.

AG ¶ 26. Conditions that could mitigate security concerns include:

- (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.

Applicant indicated his last use of marijuana occurred in June 2023, with no intent to use the drug in the future. This latest declaration of abstinence must be evaluated contextually with his promise to his command in December 2013, that he would refrain from all future drug use, his false claim that he used no marijuana between 2013 and 2019, when he continued to use marijuana throughout the period,

and his fallacious claim in August 2020, that he did not intend to use the drug in the future. In sum, his past failed promises undermine the credibility of most recent assertion and raise continuing doubts about his current reliability, trustworthiness, or good judgment.

The record demonstrates that Applicant is strengthening his commitment to forego use of marijuana in the future. However, with his history of marijuana use, eight months of abstinence is too brief to find in Applicant's favor under this mitigating condition. In addition, Applicant did not submit a signed statement of intent to abstain or face revocation of security clearance eligibility for future drug involvement. AG ¶¶ 26(a), 26(b), 26(b)(1), 26(b)(2), and 26(b)(3) do not fully apply to mitigate Applicant's illegal drug use.

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

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

The potential disqualifying conditions under AG ¶ 16 are:

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

Applicant demonstrated poor judgment and unreliability when he intentionally concealed his illegal drug use, his illegal drug use while holding a security clearance, and his omission of suicidal ideation in 1999 and the inpatient treatment events from his

July 2020 e-QIP. He exacerbated his deliberate omissions in his August 2020 PSI by providing incomplete and false information about his drug use.

AG ¶ 17. Conditions that could mitigate security concerns include:

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

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

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

Although Applicant revealed in his August 2020 PSI that his initial use of marijuana in November 2013 resulted in an NJP in December 2013, he provided a dishonest account of his drug use subsequent to December 2013. Providing false information in an e-QIP or a PSI are not minor transgressions in a security clearance investigation because the DCSA CAS makes critical decisions as to an applicant's security worthiness based on this information. Though Applicant appears to be in the right therapeutic situation to relieve his stressors and alleviate his inappropriate behavior, the mitigation he receives under AG ¶ 17(d) is insufficient to overcome the lack of persuasive evidence presented under AG ¶¶ 17(a) and 17(c). Therefore, AG ¶ 15 is resolved against Applicant.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 39 years old, and has been married since 2021. He has been employed by his company since 2019, and his 2020 employment appraisal shows he does excellent work and takes pride in his work. In reaching my decision under the three guidelines, I have also evaluated Applicant's age, his military service, the evidence of support from his friends, family, and counselors, his educational achievements, and his certificate of completion of the substance abuse course in September 2023.

On the other side of the ledger, I have also considered Applicant's incomplete account of his marijuana use since 2013. In 2021, he obtained a medical marijuana card to facilitate his purchase and use of the drug. He has used the drug for almost ten years while possessing a security clearance. His illegal drug use after being granted a security clearance, his falsification of his drug use from his e-QIP, and his falsification of portions of his drug use from his August 2020 PSI, have not been mitigated. Applicant has not met his ultimate burden of persuasion under Guidelines H and E. Conversely, he has mitigated the Guideline I security concerns.

Formal Findings

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

Paragraph 1, Guideline I:	FOR APPLICANT
Subparagraphs 1.a through 1.h:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a, 2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a through 3.d:	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge