DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-00978
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2016

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant abused alcohol on occasion from approximately 1985 to October 2015 and was convicted of drunk-driving offenses committed in August 1999 and March 2008. His continued alcohol consumption, albeit reportedly in controlled fashion, poses an unacceptable risk of relapse, given he has been diagnosed and treated for alcohol dependence. During his 2011 subject interview, Applicant refused to sign a requested release for medical records and was not forthcoming about then recent alcohol treatment. Clearance is denied.

Statement of the Case

On June 13, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On July 31, 2014, Applicant answered the SOR allegations and requested a decision based on the written record without a hearing. On April 23, 2015, Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 9, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 26, 2015, I scheduled the hearing for November 17, 2015.

I convened the hearing as scheduled. Two Government exhibits (GEs 1-2) and 18 Applicant exhibits (AEs A-R) were admitted into evidence without any objections. Applicant testified, as reflected in a transcript (Tr.) received on November 24, 2015.

Summary of SOR Allegations

The SOR alleges under Guideline G that Applicant consumed alcohol at times to excess from approximately 1985 to at least February 2014 (SOR ¶ 1.a); that he was convicted of drunk-driving offenses committed in August 1999 (SOR ¶ 1.b) and March 2008 (SOR ¶ 1.c); and that his employer had submitted an adverse information report in July 2010 about him seeking treatment for substance dependency (SOR ¶ 1.d).[1] Under Guideline E, the SOR alleges that during an April 2011 interview with an authorized investigator for the DOD, Applicant refused to sign a release for requested 2008 alcohol treatment records (SOR ¶ 2.a) and failed to disclose his 2010 treatment for substance dependency (SOR ¶ 2.b).

When he answered the SOR allegations, Applicant admitted the alcohol consumption and alcohol offenses, but he denied SOR ¶ 1.d in that he told his employer he was seeking treatment but not that it was for substance abuse. Concerning the April 2011 interview, Applicant admitted that he had refused to sign the requested release, despite being advised of "the reason for the release and why it was part of the investigation." He did not realize at the time that his failure to sign the release could be cause to revoke his security clearance. Applicant denied SOR ¶ 2.b, stating that he was not asked about substance dependence.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

[1] The allegation is not artfully framed in that it focuses on the fact that his employer submitted an adverse information report which stated that he had a substance dependency and was seeking treatment. SOR allegations are sufficient if they place an applicant on notice of the concern. In this case, the concern under Guideline G is not that Applicant's employer filed the report but that Applicant had a substance dependency problem for which he sought treatment in 2010.

Applicant is a 49-year-old college graduate. He has never married. (GE 1.) He earned his bachelor's degree in May 1990 and then served on active duty in a branch of the United States military from May 1992 to December 2000, when he was granted an honorable discharge. (AEs N-P.) He held a secret clearance for his duties in the military. (GE 1; Tr. 50.) Applicant worked for a defense contractor from October 2002 to June 2004, when his then employer's contract ended. He was unemployed until December 2005, when he began working for his current employer, a non-profit laboratory that performs work for the DOD. (GE 1.)

Applicant began drinking alcohol socially as a teenager. His drinking slightly increased after he became of legal age to consume alcohol. In the military, he began drinking to intoxication on the weekends to cope with the stress of military service. Following a brawl in one of the dorms, Applicant was ordered to attend a 12-hour alcohol awareness course on base. He denies he was involved in the fight other than to break it up. (Tr. 38.)

Applicant was arrested by local law enforcement in August 1999 for driving while intoxicated (DWI). He was found guilty, spent three days in a correctional facility, paid a $900 fine, and successfully completed a driver's improvement program on November 13, 1999. His driver's license was suspended for 30 days. (AE J; Tr. 35-36.) According to Applicant, his DWI was not reported to the military. (Tr. 38.)

Applicant stayed sober after his DWI for about six months, but he felt anxious and depressed. He resumed drinking in a controlled fashion and had no further incidents while in the military. He participated voluntarily in a health fair benefiting children in April 2000 (AEs Q, R), and was awarded one Achievement Medal and one Good Conduct Medal before he separated from the military. (AE N.)

Around 2004, Applicant was placed on antidepressant medication, which proved largely ineffective. By age 40, his drinking had increased from one to two six-packs of beer per occasion. He kept drinking sporadically. (AE E.)

In March 2008, Applicant was arrested for driving under the influence (DUI). He had consumed alcohol at a bar and was then stopped for speeding while driving to his girlfriend's home. Applicant failed a field sobriety test, and he took a breathalyzer that showed his blood-alcohol level at .13% or .14%. He pleaded guilty and was ordered to complete a state-mandated, two-week inpatient alcohol program and pay a fine. He also lost his driving privileges for two years and had to have an Interlock device on his vehicle. (Tr. 38-40, 53.)

To regain his driving privileges, Applicant attended an outpatient program for multiple DWI offenders (MOP) from September 5, 2008, to September 12, 2008. (Tr. 40.) At the referral of the MOP, Applicant was evaluated for drug and alcohol abuse in a hospital's comprehensive addictions program on January 23, 2009, and January 28, 2009. The evaluation was conducted by a staff licensed mental health counselor (LMHC) with advanced certification in alcohol and drug abuse counseling (CADACII). The LMHC

recommended that Applicant attend individual psychotherapy once a week, at least three Alcoholics Anonymous (AA) meetings over the course of the first two weeks, and then two AA meetings per week thereafter. (AE H.) Applicant attended individual therapy with the LMHC until July 1, 2009, when his case was transferred to a staff licensed clinical social worker (LICSW) with CADACII certification. (AE F.) The LICSW diagnosed him with alcohol dependence (AE G), although Applicant claims no one told him that he was alcohol dependent. (Tr. 40-41.) On the LICSW's referral, Applicant was evaluated by a staff psychiatrist and placed on an antidepressant. Applicant responded positively. He became more involved in his treatment, and he reportedly stopped drinking in September 2009. On December 2, 2009, Applicant completed his substance abuse treatment. The LICSW assessed Applicant's risk of recidivism as low. In the opinion of the LICSW, much of Applicant's drinking appeared to be an attempt at self-medication for mild to moderate depression. Applicant was responding well to medication and was participating in AA. Applicant intended to continue attending a relapse-prevention group and see a staff psychiatrist for pharmacological management. (AE E.) It is unclear how long Applicant continued to attend relapse-prevention groups or when he first relapsed after December 2009.

Applicant was under stress, arguing with his girlfriend, and "things were starting to go bad as far as [his] drinking," so he voluntarily admitted himself for two weeks of inpatient alcohol treatment around July 2010.[2] (Tr. 46-47.) Applicant was drinking about 52 ounces of beer at a sitting on the weekends and maybe two or three times during the work week. (Tr. 54.)

In July 2010, Applicant's employer submitted an adverse incident report to DOHA stating that Applicant had a substance-dependency problem for which he was seeking treatment. (GE 2.) Applicant does not deny that he sought treatment, but he denies telling his employer that he had a dependency problem. (Tr. 46.) He testified that he had discussed the issue with his union beforehand and was told that he did not need to reveal the reason for his treatment. (Tr. 33.)

On March 10, 2011, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (QNSP) incorporated within an Electronic Questionnaires for Investigations Processing (e-QIP) Investigation Request. In response to whether he had ever been charged with any offenses related to alcohol or drugs, Applicant listed his March 2008 DUI and that he completed a mandatory state-run program. He responded affirmatively to inquiries covering the preceding seven years into whether he had been ordered to seek counseling or treatment as a result of his alcohol use and whether he had received counseling or treatment as a result of his alcohol use. He disclosed no treatment apart from the state-mandated program that he attended in September 2008. (GE 1.) Applicant did not disclose his August 1999 DWI because he thought he only had to list offenses that occurred within seven years of the QNSP. (Tr. 32.) About his failure to disclose his 2010 inpatient substance-abuse treatment, Applicant testified that there was only one block in which to input information. Applicant later

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[2] The evidentiary record about this treatment consists solely of Applicant's testimony. The medical records are not provided for my review.

explained that he did not think he had to report voluntary treatment. Referring to the adverse incident report noting that he sought treatment in July 2010, Applicant indicated that voluntary treatment should be viewed positively. (Tr. 48.)

Applicant was interviewed by an authorized investigator on April 7, 2011, as part of his background investigation. There is no report in evidence reflecting what transpired in the interview, although Applicant admits that he did not sign a requested release for medical information from 2008. He believed then and still that his treatment is a matter between him and his physician. (Tr. 33.) As to why he did not inform the investigator about his 2010 inpatient treatment, Applicant indicated in response to the SOR alleged omission that he was not asked about substance dependency. At his hearing, he testified on direct examination as follows:

> And failure to disclose the 2011 [sic] treatment, I thought we were—this line of questioning that this lady was giving me was in reference to this, not subsequent periods of time. So, I didn't even think about that when she was asking me. I was thinking backwards. (Tr. 33.)

In January 2015, Applicant began attending weekly addiction-recovery-support meetings of "SMART Recovery," a secular and science-based network of mutual-help support groups recognized by leading medical and addiction associations and agencies in the United States, including the American Society of Addiction Medicine and the National Institute on Alcohol Abuse and Alcoholism. The facilitator of the local meetings attests to Applicant being a regular attendee, open and honest about his situation and determined to develop a commitment to sobriety. In the facilitator's opinion, Applicant had made great strides in a short period of time. (AE D; Tr. 41-42.)

In May 2015, Applicant began individual counseling three to four times a month with a private LMHC. According to his therapist, Applicant has been "a consistent and engaging participant in this therapy, and has taken to recommendations made by [the therapist] to improve himself." (AE C.) Applicant has attended AA once or twice a week since 2009. As of November 2015, he was attending two or three AA meetings a week in addition to his weekly SMART Recovery group and individual counseling with the LMHC. (Tr. 41, 51-52.) Applicant has never had a sponsor in AA, although his therapist has told him it would be helpful for him to have a sponsor. (Tr. 55.) He feels it would be an imposition if he called a sponsor every night or whenever. (Tr. 56.) He attends one AA step meeting a week, but it is "very foreign" to him. (Tr. 57.) Applicant finds some benefit from talking to others in AA because a "normal drinker" would not understand. (Tr. 57.)

Applicant denied drinking to intoxication since September 2009, but he admitted to some "slips," in that he might have a beer while out to dinner with his girlfriend and one or two beers at a lobster bake hosted by his girlfriend's brother every summer or while watching sports on television. (Tr. 34-35, 44.) He understands from people in recovery that slips are a normal part of the recovery process. (Tr. 44.) He no longer drives if his blood alcohol level exceeds the legal limit. He has a portable breathalyzer device in his car that he purchased to ensure that he does not drive a vehicle while impaired. (Tr. 45.) As of his

November 18, 2015 security clearance hearing, Applicant's most recent consumption was in late October 2015, when he "had time on his hands" and drank alcohol while watching football. (Tr. 35.) He denies any cravings for alcohol. (Tr. 58.)

Applicant would like to stop drinking completely at some point because of all the problems alcohol has caused him. He continues his therapy for assistance in that regard. Applicant's various counselors have recommended that he abstain from alcohol completely, although according to Applicant "only for health reasons later on in [his] life." Applicant does not consider himself addicted to alcohol. He has served as designated driver on occasion and has no problem being the designated driver. He does not know why he has not been able to abstain completely from alcohol. (Tr. 49, 52.) His girlfriend for the last seven years has expressed concerns to him about his drinking in the past, but she has not done so since his March 2008 DUI. (Tr. 54.) As of November 2015, Applicant was taking a prescription drug to minimize his anxiety symptoms. (Tr. 66.)

Work and other references

Applicant earned an overall rating of solid performer for his work performance from July 2013 through June 2014. He either met or frequently exceeded the established job standards for his position as a technician. The quality of his work showed significant improvement over the previous rating period. He kept his group leader regularly informed about his task assignments while working on several different teams. (AE L.) In June 2014, Applicant's work on a critical government program was recognized by his employer with a $500 monetary award. (AE M.)

In June 2015, a new task leader was assigned to a program Applicant had supported for several years. This task leader was informed by his predecessor that Applicant had been instrumental in the initial success of the program and that he should take care to ensure that Applicant was not transferred to another program. Over the next five months, Applicant demonstrated dependability, integrity, and professionalism to where the task leader considers him an "irreplaceable member" of the team. (AE A.)

A personal friend, who has known Applicant for the past seven years, considers him to be a man of character on whom one can rely. In her opinion, Applicant has learned through counseling of what is of value to him. She can now rely on him to be a designated driver because he drinks only one or two beers socially at special occasions and holidays. In her opinion, he has learned from his mistakes and is moving forward toward positive goals and a fulfilling life. (AEs B, K.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

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

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

Applicant started drinking as a teenager. His alcohol consumption increased once he was of age to drink legally, and he turned to alcohol to cope with stress when he was in the military. Following his March 2008 DUI, which was his second drunk-driving offense, Applicant had to complete a mandatory multiple-offender program. He was referred for

counseling, and he participated in outpatient individual therapy and relapse-prevention groups from January 2009 to at least December 2009. The LICSW who took over Applicant's therapy in July 2009 diagnosed him with alcohol dependence. He assessed Applicant's risk of recidivism as low in December 2009 based on Applicant's reported abstinence from alcohol since September 2009 and on Applicant's progress in recovery, aided largely by medication for depression. Yet, Applicant admitted himself for two weeks of inpatient substance-abuse treatment in July 2010. Applicant denies he was dependent on alcohol, but he admits that "things were starting to go bad as far as [his] drinking." He was drinking 52 ounces of alcohol at a sitting on the weekends and two or three times during the work week. Three disqualifying conditions under AG ¶ 22 are established:

> (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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
>
> (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and
>
> (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant denies any drinking to intoxication since September 2009. His consumption of 52 ounces of beer at a sitting as of July 2010 may well fall within the definition of binge drinking.[3] However, without knowing the amount of time over which he drank, I cannot conclude that AG ¶ 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent," applies. Even so, this drinking since 2010 qualifies as a serious relapse under AG ¶ 22(f), given Applicant had completed a year of outpatient treatment in 2009 for diagnosed alcohol dependence.

Applicant has had some "slips" since his inpatient treatment in 2010. He reportedly drinks one or two beers on occasion when out to dinner with his girlfriend, at a lobster bake each summer, and while watching sporting events. More than five years have passed since Applicant's alcohol caused relationship problems with his girlfriend. It has been more than seven years since his last drunk-driving offense. AG ¶ 23(a) provides for mitigation when enough time has passed to enable a predictive judgment that alcohol problems are not likely to recur:

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[3] Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. *See* U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), http://www.pubs.niaaa.nih.gov/publications/Newsletter/ winter2004/NewsletterNumber3.pdf.

(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 good judgment.

To the extent that Applicant satisfies a component of AG ¶ 23(a) by the passage of time without any alcohol-related incident or evidence of intoxication, AG ¶ 23(a) does not fully address the risk of relapse posed by his continued drinking given his diagnosed alcohol-dependency problem, however.

Applicant denies he has ever been an alcoholic, but there is no evidence from a qualified medical professional or substance abuse clinician challenging the 2009 diagnosis of dependency by Applicant's then treatment provider, a LICSW with advanced credentials in alcohol and drug abuse counseling. Furthermore, Applicant's excessive drinking in 2010 after a year of outpatient substance abuse treatment tends to substantiate the clinician's diagnosis. Security concerns raised by alcohol dependency can be mitigated under AG ¶ 23(b) or AG ¶ 23(d):

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has taken steps to avoid recurrence of the problems that alcohol has caused him. His outpatient counseling in 2009 cannot be considered as completely voluntary because it was at the referral of the MOP for his second DUI. However, he apparently continued to attend some counseling sessions after he completed the program. His 2010 inpatient treatment was completely voluntary. In May 2015, Applicant started individual therapy with a LMHC. Additionally, Applicant has been attending AA since 2009 and SMART Recovery meetings since January 2015. Applicant reports drinking in controlled fashion for some five years, which could indicate that his alcohol dependency is being adequately managed through his self-help meetings (AA and SMART Recovery), his individual therapy, and his medication.

Nevertheless, neither AG ¶ 23(b) nor AG ¶ 23(d) fully apply. He has yet to acknowledge his alcohol-dependency problem. His various treatment providers have all advised him to abstain from alcohol, although he claims it is only to avoid health issues in

the future. Abstinence remains an elusive goal for him, and he has no explanation for why he has been unable to stop drinking completely. Applicant is credited with attending AA for several years, but he does not appear to be fully committed to the program. He still does not have a sponsor in AA, and step meetings are "foreign" to him. As for a favorable prognosis, Applicant was considered at low risk to recidivate in December 2009 based on his commitment to his recovery and abstinence since September 2009. The LICSW's prognosis carries little weight at this point, given Applicant's excessive drinking in 2010, which led him to seek inpatient treatment. The available record is silent as to Applicant's clinical presentation, the nature of his treatment, or his progress during his two-week, inpatient stay. Applicant has been in therapy with a LMHC since May 2015, but it is unclear whether any of that treatment has focused on alcohol issues. Applicant is credited with being an active participant in his therapy and with following the recommendations of his therapist, but it is not enough to overcome the alcohol consumption concerns. He continues to drink against clinical advice, despite his diagnosed alcohol dependency and a professed desire to abstain completely. The alcohol consumption security concerns are not mitigated.

Guideline E, Personal Conduct

The security concern about personal conduct is articulated 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 security clearance process.
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> The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:
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> (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and
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> (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The SOR alleges that Applicant failed to comply with his obligation of full disclosure during his April 2011 subject interview in two aspects. He refused to sign a requested release for medical records (SOR ¶ 2.a) for the September 2008 treatment listed on his QNSP and he did not disclose that he had been treated for substance dependency around July 2010 (SOR ¶ 2.b). Applicant admits that he refused to sign a release for his medical records because he considered it a matter between him and his physician. Under Guideline E, a failure to authorize release for medical records would normally result in an unfavorable

clearance determination. The Government has a legitimate expectation that persons seeking the privilege of security clearance eligibility cooperate with the security clearance process. To the extent that AG ¶ 15(a) is implicated, the refusal or failure to cooperate may be mitigated under AG ¶ 17(b), which provides as follows:

> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

No report was made available about the exchange between Applicant and the investigator that led him to refuse to sign a release for medical information. When he responded to the SOR allegation, Applicant explained his failure to sign the requested release, as follows:

> I thought I was able to use doctor-patient confidentiality agreement. I was not made aware during the interview that not signing a release could cause my clearance to be revoked, only the reason for the release and why it was part of the investigation.

Assuming that Applicant did not know that his failure to sign a release could affect his security clearance eligibility, he apparently was informed about the reason for the release and its part in the investigative process. Applicant's obligation to cooperate exists irrespective of the consequences of his decision. It is difficult to find that Applicant acted in good faith and did not intend to conceal information from the DOD when he refused to authorize release of his medical records, particularly where he had not disclosed either his 2009 outpatient counseling or his 2010 inpatient treatment on his March 2011 QNSP.[4] AG ¶ 17(b) does not apply to his failure to sign a requested release.

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[4]The SOR does not allege Applicant's omission of his 2009 outpatient counseling or his 2010 inpatient alcohol treatment from his QNSP as a security concern under Guideline E, even though it could be disqualifying under AG ¶ 16(a):

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

The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole person analysis under Section 6.3 of the Directive. *See*, *e.g.*, ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006); ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012). Applicant's failure to disclose his then relatively recent alcohol treatment on his QNSP undermines his credibly generally.

As for his failure to disclose his 2010 treatment during his April 2011 interview, Applicant denies that it was deliberate. When he responded to the SOR, he stated, "This supposed failure of disclosure was not mentioned in the Testimonies of my Personal Subject Interview [case number omitted]. I was not asked about substance dependency." At his hearing, Applicant testified on direct examination that he did not think about the treatment when he was being questioned in that he "was thinking backwards." When asked about his failure to report the treatment on his QNSP, Applicant testified that he did not believe he had to inform the government about his voluntary treatment. AG ¶ 15(b) is not pertinent in the absence of any proof that Applicant was asked about the substance abuse treatment that was the subject of a July 2010 adverse incident report to DOHA. The investigator may not have known about the adverse information report and so may not have inquired about any treatment beyond the September 2008 offender program listed on the QNSP. Without some evidence that Applicant was asked whether he had any other treatment and responded falsely, the issue is one of omission rather than falsification. AG ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," does not strictly apply.

Nevertheless, when viewed in light of the QNSP omission of his 2009 outpatient and 2010 inpatient treatments and his refusal to authorize release of his medical records, it is difficult to find that Applicant acted other than to conceal the extent of his alcohol problem from the DOD in 2011. AG ¶ 16(e) applies:

> (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal professional, or community standing.

Applicant's lack of full cooperation and candor during his interview in April 2011 occurred some time ago, and the judgment concerns have been partially overcome by his submission into evidence at his November 2015 hearing of his outpatient treatment records from 2009 and by his testimony about his alcohol use in 2010 that led him to seek treatment. Albeit belatedly, Applicant has provided the information that the DOD sought when it asked him to sign the release in 2011. Applicant partially satisfies three mitigating conditions under AG ¶ 17:

> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
>
> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Yet, it is difficult to conclude that Applicant is fully reformed and that he can be counted on to comply with his obligations of candor and full cooperation going forward. While he is credited with informing his employer in July 2010 that he was seeking treatment, he claims that he did not indicate that it was substance dependence. He offered no explanation for why his employer would have otherwise known the purpose for his treatment. When asked why he did not disclose his inpatient treatment in 2010 on his QNSP, Applicant initially responded that there was only one block for information. He then indicated that he did not think he had to inform the DOD about any voluntary treatment. The personal conduct concerns are not fully mitigated without a consistent, credible explanation for his failure to sign the requested release and to provide full and frank information about his alcohol abuse and treatment.

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 his conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

My analyses under Guidelines G and E are incorporated in the whole-person assessment of Applicant's security eligibility, but some factors warrant additional comment. Applicant's work performance evaluation for 2013-2014 and his task leader's favorable character reference show that he is meeting and in some aspects exceeding his employer's expectations. There is no evidence that his work has been negatively affected or compromised by his alcohol abuse or his anxiety or depression. That being said, he raised significant doubts about his judgment and reliability by engaging in off-duty alcohol abuse to the point of diagnosed dependence and two drunk-driving convictions. The Government has ample reason to question his trustworthiness in light of his efforts to justify his failure to be fully forthright and cooperative during his April 2011 interview.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After considering

all the facts and circumstances, I conclude that it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance at this time.

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 G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant
Subparagraph 1.b: Against Applicant
Subparagraph 1.c: Against Applicant
Subparagraph 1.d: Against Applicant[5]

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant
Subparagraph 2.b: Against Applicant

Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge

[5] The fact that Applicant voluntarily sought treatment in July 2010 is viewed positively. The allegation is found against him because of the abuse of alcohol in 2010 that led him to seek treatment.