



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01490

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

12/15/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has mitigated the security concerns regarding alcohol consumption and psychological conditions. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On July 24, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On October 18, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to the interrogatories on November 15, 2013.² On May 8, 2014, the DOD CAF issued him another set of interrogatories. He responded to the interrogatories on May 30, 2014.³ On January 21, 2015, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding*

¹ Item 2 (e-QIP, dated July 24, 2013).

² Item 3 (Applicant's Answers to Interrogatories, dated November 15, 2013).

³ Item 5 (Applicant's Answers to Interrogatories, dated May 30, 2014).

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 the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines G (Alcohol Consumption) and I (Psychological Conditions), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a statement, notarized February 11, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁴ A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on September 21, 2015, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive, as well as the Guidelines applicable to his case. Applicant received the FORM on October 1, 2015. The response was due on October 31, 2015. As of this date, Applicant had not submitted any response to the FORM. The case was assigned to me on December 1, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to alcohol consumption and psychological conditions in the SOR (¶¶ 1.a. through 1.c., and 2.a.). Applicant's admissions are incorporated herein as findings of fact. 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:

Applicant is a 43-year-old employee of a defense contractor. He has been serving as a customer service representative with his current employer since January 2013.⁵ He was previously unemployed from July 2012 until January 2013.⁶ He is a May 1991 high school graduate with a December 1997 bachelor's degree in an unspecified discipline. Applicant also completed some graduate training, but did not obtain another degree.⁷ He has never served with the U.S. military.⁸ He was never granted a security clearance.⁹ Applicant was never married.¹⁰

⁴ Item 1 (Applicant's Answer to the SOR, dated February 11, 2015).

⁵ Item 2, *supra* note 1, at 10-11.

⁶ Item 2, *supra* note 1, at 11.

⁷ Item 2, *supra* note 1, at 8-10.

Alcohol Consumption and Psychological Conditions

Applicant is a self-described alcohol-dependent whose drink of choice was beer and wine. He first consumed alcohol at the age of 21 when he drank an unspecified quantity of beer on weekends at parties with friends. The frequency increased to drinking alcohol nearly every day in approximately 1998. In November 2003, after some previous alcohol-related incidents, discussed further below, Applicant purportedly started taking sobriety seriously. He remained periodically “sober”, as opposed to “abstinent”, for approximately seven or eight years, briefly relapsed in 2011, and again in May 2014, although he was regularly attending Alcoholics Anonymous (AA) meetings. Applicant characterized a May 2013 self-described relapse as the result of the stress of his new job. In January 2014, he indicated that the last time he consumed alcohol was in May 2013. He contended that for a period of 30 days in May 2013, he consumed an unspecified quantity of alcohol. He stated that he resumed sobriety and once again embraced AA.

Applicant now attends AA meetings four to six times per week, has a sponsor, and is working the 12-step program. He re-established a network of individuals, including AA members, family, and his supervisor, to whom he can reach out if he feels the need to do so.¹¹ In his psychological evaluation, conducted in October 2014, Applicant indicated he had been sober “for about five months now.”¹² In his Answer to the SOR, he admitted that he had been “alcohol-free” since June 2014.¹³

When Applicant consumed alcohol he was happy and euphoric. At times, he experienced slurred speech, staggering, and passing out. He acknowledged that alcohol may have had a negative impact on his attendance at graduate school and on his current employment (especially when he failed to call his supervisor and missed work one day).¹⁴ Applicant acknowledged that it was initially difficult for him to admit to himself and to others that he had relapsed. He also admitted that there are times when he feels anxious, but that he knows that taking a drink does not assuage that anxiety. He knows he needs to be vigilant and on-guard when it comes to alcohol. If he feels a craving or is uncomfortable, he reaches out to another sober individual for help. Those earlier urges have subsided since he started working on the 12-step program with his sponsor.¹⁵

⁸ Item 2, *supra* note 1, at 13.

⁹ Item 2, *supra* note 1, at 31.

¹⁰ Item 2, *supra* note 1, at 15.

¹¹ Item 4 (Affidavit, dated January 14, 2014), at 3; Item 3, *supra* note 2, at 3, 5; Item 9 (Psychological Evaluation, dated October 9, 2014), at 1-2.

¹² Item 9, *supra* note 11, at 2.

¹³ Item 1, *supra* note 4, at 3.

¹⁴ Item 4, *supra* note 11, at 3.

¹⁵ Item 1, *supra* note 4, at 3.

Applicant has had several incidents with police and judicial authorities associated with his consumption of alcohol. In March 2000, after visiting a friend and consuming an unspecified quantity of beer, Applicant was driving home when he blacked out. The police stopped him for driving under the speed limit. He was administered a field sobriety test, which he failed. He was arrested and charged with driving under the influence (DUI).¹⁶ Upon pleading no contest and being found guilty, Applicant was ordered to attend a three-day course on drinking and driving, his operator's license was revoked (with an exception permitting him to drive to school) for six months, and he was ordered to pay \$1,000 in fines and court costs.¹⁷

In September 2003, after drinking wine heavily, and while driving, Applicant had the urge to urinate. He pulled into a parking lot to relieve himself when two police cars pulled up behind him. He was arrested and charged with public indecency due to intoxication. He was found guilty as charged, and sentenced to probation for six months, and ordered to pay an unspecified amount in fines and court costs.¹⁸

In November 2003, on the anniversary of his father's death, and during a period when his drinking admittedly had gotten "extremely out of hand," despite being intoxicated, Applicant drove to a park. He was stopped by the police for expired tags on his motor vehicle. Applicant was administered a field sobriety test, which he failed. He was arrested and charged with DUI. Two hours later, he was administered a breathalyzer test, and it registered 0.195, well over the legal limit for intoxication. After spending one night in jail he was released. He subsequently pled no contest and was found guilty as charged. He was sentenced to ten days in jail, his operator's license was suspended (with an exception permitting him to drive to work and AA meetings) for one year, and he was ordered to attend alcohol counseling.¹⁹

In addition to his attendance at, and participation in, a three-day course on drinking and driving in 2000, alcohol counseling in 2003, and AA meetings over a period of years, Applicant underwent alcohol and mental health counseling on a weekly basis from August 2, 2003 until June 18, 2005. The counselor, a licensed social worker (LSW) as well as a licensed independent chemical dependency counselor (LICDC), indicated that Applicant had discontinued counseling and was "unsuccessful in completing his treatment goals at that time."²⁰ The counselor's "report" was in the form of a confidential letter to the Defense Office of Hearings and Appeals (DOHA). It failed to: discuss any

¹⁶ Applicant described the incident as involving an OVI rather than a DUI. OVI is an acronym for Operating a Vehicle Impaired, but the characterization did not come into effect until the state legislature changed it in January 2005. Because there is no police incident report or court record in evidence, the sole source for the description of this and the ensuing events is Applicant's recitation of the events.

¹⁷ Item 4, *supra* note 11, at 2.

¹⁸ Item 4, *supra* note 11, at 2.

¹⁹ Item 4, *supra* note 11, at 2-3.

²⁰ Item 6 (Letter, dated May 28, 2014); Item 2, *supra* note 1, at 31.

background information; identify any specific tests that might have been administered; review any test results; offer any diagnoses; or identify what goals were not met.

Applicant also underwent individual psychotherapy with a clinical psychologist from January 2009 until December 2012.²¹ Although Applicant was denied access to his records (to furnish to DOHA) by the director of the center because the specific release submitted did not comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as other legal issues which had arisen since the healthcare provider had apparently abandoned the records upon her departure from the practice, several diagnoses did appear in other documentation released to him. Those diagnoses, apparently under an unspecified version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) were as follows: 296.31—major depressive disorder, recurrent, mild; 300.01—panic disorder without agoraphobia; 300.02—generalized anxiety disorder; and 300.3—obsessive-compulsive disorder.²² None of the diagnoses were alcohol-related disorders.

As noted above, on October 9, 2014, Applicant underwent a psychological evaluation with another clinical psychologist at the behest of the DOD CAF. Applicant underwent a clinical interview, and he was administered the Mini Mental Status Examination (MMSE),²³ the Minnesota Multiphasic Personality Inventory–2 (MMPI-2),²⁴ and the Substance Abuse Subtle Screening Inventory–3 (SASSI-3).²⁵ Based on the clinical interview and the test results, the psychologist opined that Applicant’s MMSE results (30 points out of a maximum 30 points) reflected “very minimal cognitive impairment;”²⁶ the MMPI-2 results reflected scale 2 depression: Applicant feels somewhat inadequate personally and possibly has some low self-worth; tends to view the future with uncertainty and a degree of pessimism; worries excessively; is sensitive, especially to criticism; is currently not so satisfied with his life; may be reacting to stress by internalizing it inward to a depression; and there is “the possibility of [alcohol dependence];”²⁷ and the SASSI-3 reflected “a high probability” for substance

²¹ Item 2, *supra* note 1, at 24.

²² Item 7 (Therapy Records, dated May 30, 2014), at 3.

²³ The MMSE, incorrectly identified by the clinical psychologist as the Mini Mental State Evaluation, is an effective screening tool for cognitive impairment with older adults. It is an 11-question measure that tests five areas of cognitive function: orientation, registration, attention and calculation, recall, and language. The maximum score is 30.

²⁴ The MMPI-2 is designed to provide relevant information to speed diagnosis and psychiatric treatment planning for psychiatric patients as well as a range of assessments in the evaluation of disorders such as post-traumatic stress disorder, clinical depression; identification of suitable candidates for high-risk public safety positions (nuclear power plant workers, police officers, airline pilots, etc.); and the evaluation of participants in substance abuse programs. It consists of 567 true-false questions. There are ten trait scales available.

²⁵ The SASSI-3 is a screening measure designed to assist in the identification of individuals who have a high probability of having a substance dependence disorder. It consists of 93 questions.

²⁶ Item 9, *supra* note 11, at 2.

²⁷ Item 9, *supra* note 11, at 3. The clinical psychologist also speculated that Applicant “may be indeed self-medicating his symptoms with alcohol,” but there is no evidence to support that suggestion. Applicant did, however, confirm that he never felt comfortable taking anti-anxiety or anti-depressant medication. See Item 5, *supra* note 3, at 5.

dependence; Applicant admitted to alcohol dependence; he is “in very early remission albeit not in full remission at this point;” he is still vulnerable to relapse; and “he wants very much to remain abstinent now.”²⁸

The clinical psychologist submitted the following diagnostic impressions under an unspecified version of the DSM: Axis I: 300.4-dysthymic disorder; rule out 296.31-major depressive disorder, recurrent, mild; 300.02-generalized anxiety disorder; 303.90-alcohol dependence in early full remission; Axis II: rule out dependent and avoidant personality traits; Axis III: situs inversus reported;²⁹ Axis IV: alcohol dependence, relational, past legal (DUIs), medical, depression/anxiety; Axis V: GAF=60.³⁰ The most significant diagnosis was 303.90-alcohol dependence with the remission specifier “in early full remission.”³¹

In addition to the diagnostic impressions, the clinical psychologist set forth a discussion in a question and answer format based upon his observations, the most relevant of which are essentially as follows:

- If Applicant can get his alcohol issues under control and clinically work on his depression, anxiety and stress issues, he can probably be a reliable, consistent, and even trustworthy employee. I believe he is on target to do this. However, counseling for these issues is recommended, especially for his alcohol problem;
- If Applicant takes recovery and treatment seriously, he will likely be successful and his judgment, reliability, and trustworthiness should improve as well as not be in question;
- Applicant has had treatment in the past for his alcohol and anxiety issues. His prognosis for alleviating the depression and anxiety issues are good. He is in the early phase of recovery. He should continue in AA, obtain a sponsor, and attend groups and individual counseling. He should continue his previous course of treatment by other mental health and substance abuse professionals.³²

²⁸ Item 9, *supra* note 11, at 2-3.

²⁹ Situs inversus is a genetic condition that causes the organs in the chest and abdomen to be positioned in a mirror image from their normal positions.

³⁰ A multiaxial system was developed which involves an assessment on several axes, each of which refers to a different domain of information that may help the clinician plan treatment and predict outcome. There are five such axes in the DSM-IV multiaxial classification: Axis I: clinical disorders & other conditions that may be a focus of clinical attention; Axis II: personality disorders & mental retardation; Axis III: general medical conditions; Axis IV: psychosocial and environmental problems; and Axis V: global assessment of functioning. Item 9, *supra* note 11, at 3.

³¹ The remission specifier “early full remission” is used if, for at least 1 month, but for less than 12 months, no criteria (incidents) for alcohol dependence have been met. The remission specifier “sustained full remission” is used if none of the criteria for dependence have been met at any time during a period of 12 months or longer. See DSM-IV-TR at 195-196.

³² Item 9, *supra* note 11, at 4.

The clinical psychologist's report summarized as follows: Applicant would be suitable for a security clearance providing he sustains consistent treatment around his mental health and substance dependency; his prognosis for recovery is good and his reliability and trustworthiness would improve; and if he complies with therapy, substance abuse, and AA treatment, clinically he would be a very stable employee.³³

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."³⁴ 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's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."³⁵

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 useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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."³⁶ 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

³³ Item 9, *supra* note 11, at 5.

³⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁶ "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).

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.³⁷

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 protect or 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."³⁸

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."³⁹ 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 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 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. Under 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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent" is potentially disqualifying. In addition, "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the

³⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁸ *Egan*, 484 U.S. at 531

³⁹ See Exec. Or. 10865 § 7.

individual is diagnosed as an alcohol abuser or alcohol dependent,” may apply under AG ¶ 22(c). Similarly, a “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence” is of security significance under AG ¶ 22(d). An “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program” is potentially disqualifying under AG ¶ 22(e). Additionally, “relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program” is also of security significance.

AG ¶ 22(a) has been established by Applicant’s alcohol-related arrests and convictions in 2000 and 2003; AG ¶ 22(c) has been established, because Applicant repeatedly consumed alcohol to the point of intoxication over a lengthy period; and AG ¶ 22(d) has been established by the alcohol dependence diagnosis made by the clinical psychologist in October 2014. AG ¶ 22(e) has not been established as the record is silent regarding any diagnosis made by the LSW with whom Applicant met from 2003 until 2005; and AG ¶ 22(f) has not been established by any reported relapse following the October 2014 diagnosis of alcohol dependence, the only time such a professional, as opposed to a self-diagnosis, of alcohol dependence was made.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 23(b), the disqualifying condition may be mitigated where “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).” Likewise, AG ¶ 23(c) may apply if “the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress.” Similarly, AG ¶ 23(d) applies where the evidence shows:

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 professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶¶ 23(a), 23(b), 23(c), and 23(d) all partially apply. There is no evidence that Applicant ever appeared intoxicated or impaired at work. The only alcohol-related “incidents” involving police authorities and judicial authorities were the ones in March 2000 (DUI), September 2003 (public indecency), and November 2003 (DUI) with the most recent such incident now over 12 years ago. While Applicant acknowledges his

alcohol dependency, and he experienced several self-described relapses over the years, those relapses did not involve driving. With the exception of those incidents, he has never had any other involvement with law enforcement or judicial authorities even remotely related to his alcohol consumption. Applicant completed the court-mandated alcohol-program attendance, and participated in a three-day course on drinking and driving in 2000, alcohol counseling in 2003, AA meetings over a period of years, alcohol and mental health counseling from 2003 until 2005, and individual psychotherapy from 2009 until 2012. There is no evidence in the record that he was ever advised to abstain from using alcohol. There is no evidence that Applicant was prescribed medication to treat his alcohol dependency. Also, there is unsupported speculation that Applicant was self-medicating his non-alcohol-related conditions with alcohol. Applicant acknowledged that it was initially difficult for him to admit to himself and to others that he had relapsed. He also admitted that there are times when he feels anxious, but that he knows that taking a drink does not assuage that anxiety. He knows he needs to be vigilant and on-guard when it comes to alcohol. If he feels a craving or is uncomfortable, he reaches out to another sober individual for help. Those earlier urges have subsided since he started working on the 12-step program with his sponsor.

Now abstinent since June 2014 – 6 months before the SOR was issued and 18 months ago – Applicant’s updated diagnosis should be changed to read alcohol dependence in “sustained full remission,” since none of the criteria for dependence have been met at any time during a period of 12 months or longer. Applicant has taken full responsibility for his actions. He accepted the information and mastered the coping skills developed in his various education and therapy programs, and he is now aware of the negative effects of consuming alcohol. The most recent clinical discussion of Applicant’s issues was submitted in October 2014. It was said that Applicant would be suitable for a security clearance providing he sustains consistent treatment around his mental health and substance dependency. His prognosis for recovery is good and his reliability and trustworthiness would improve. If he complies with therapy, substance abuse, and AA treatment, clinically he would be a very stable employee. Applicant chose to work with AA without any further mental health treatment. Nevertheless, his condition has continued to improve, and I conclude that his alcohol problem is now actually alcohol dependence in “sustained full remission” and will not recur. His relationship with alcohol no longer casts doubt on Applicant’s current reliability, trustworthiness, or good judgment.

Guideline I, Psychological Conditions

The security concern relating to the guideline for Psychological Conditions is set forth in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and

mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 28(a), “behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior”, may raise security concerns. If there is “an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness,” AG ¶ 28(b) may apply. Similarly, where “the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication,” AG ¶ 28(c) might apply.

There have been two sets of diagnoses: In December 2012, they were as follows: 296.31—major depressive disorder, recurrent, mild; 300.01—panic disorder without agoraphobia; 300.02—generalized anxiety disorder; and 300.3—obsessive-compulsive disorder. While it does not appear that those conditions are covered under any other guideline, none of the diagnoses were alcohol-related disorders. Moreover, there is no documented analysis by the clinical psychologist that any of the diagnosed conditions refer to “emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior” that might cast doubt on Applicant’s judgment, reliability, or trustworthiness. In October 2014, the other diagnoses were Axis I: 300.4-dysthymic disorder; rule out 296.31-major depressive disorder, recurrent, mild; 300.02-generalized anxiety disorder; 303.90-alcohol dependence in early full remission; Axis II: rule out dependent and avoidant personality traits; Axis III: situs inversus reported; Axis IV: alcohol dependence, relational, past legal (DUIs), medical, depression/anxiety; Axis V: GAF=60. The focus was on alcohol dependence in early full remission, clearly a condition that is covered under Guideline G. Furthermore, the clinical psychologist noted that Applicant would be suitable for a security clearance providing he sustains consistent treatment around his mental health and substance dependency. His prognosis for recovery is good and his reliability and trustworthiness would improve. If he complies with therapy, substance abuse, and AA treatment, clinically he would be a very stable employee.

The SOR seems to focus on a non-issue in the 2014 diagnoses that supposedly increases Applicant’s risk of self-medicating with alcohol, and that the self-medication increases his relapse into alcohol use, the combination of which impairs his judgment, reliability or trustworthiness. The position is without merit. The issue of self-medication was based on mere speculation, without any evidence in the psychological evaluation to support it. The SOR does acknowledge that Applicant’s mental health prognoses are good so long as he continues with psychotherapy treatment and with substance abuse treatment. Department Counsel rejected Applicant’s voluntary attendance at AA meetings asserting that they do not comply with the “recommendation” by the clinical psychologist calling for a “structured, consistent treatment.” What is missing from that analysis is that the recommendation appears in an evaluation from an individual

selected by the DOD CAF to perform merely a psychological evaluation. It is not from a treating physician who has a continuing professional relationship, not merely a one-day series of tests and a brief interview. AG ¶¶ 28(a) and 28(c) have not been established, and AG ¶ 28(b) has been minimally established.

The guideline also includes examples of conditions that could mitigate security concerns arising from psychological conditions. If “the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan,” AG ¶ 29(a) might apply. Under AG ¶ 29(b), it is potentially mitigating where “the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional.” If there is a “recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation,” AG ¶ 29(c) may apply. In addition, AG ¶ 29(e) may apply if “there is no indication of a current problem.”

AG ¶¶ 29(a), 29(b), and 29(c) partially apply, and AG ¶ 29(e) applies. Applicant’s most recent alcohol-related incident involving police authorities and judicial authorities occurred in November 2003, over 12 years ago. There is no evidence that his other conditions have caused him to be emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or to exhibit bizarre behavior. He was given various diagnoses by clinical psychologists in 2012 and 2014. He attended various educational sessions, underwent alcohol counseling as well as alcohol and mental health therapy, and received individual psychotherapy for several years. While he may have experienced periodic self-described alcohol relapses, there is no evidence that any of his other diagnosed conditions was not readily controllable with therapy or simply over time without therapy. Applicant’s treating clinical psychologist failed to memorialize a treatment plan and made no recommendations. The evaluating clinical psychologist did not prescribe a particular specific treatment plan, but he clearly noted that Applicant would be suitable for a security clearance providing he sustains consistent treatment around his mental health and substance dependency. Applicant’s prognosis for recovery was considered good and his reliability and trustworthiness would be expected to improve. If Applicant complies with therapy, substance abuse, and AA treatment, clinically he would be a very stable employee. Applicant chose to embrace AA and its 12-step program, and he has managed to avoid alcohol for 18 months without relapse or other negative incidents. His 2014 diagnosis of alcohol dependence in early full remission under the DSM should be updated to alcohol dependence in sustained full remission. There is no evidence of a continuing or current problem.

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 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G and E in my analysis below.

There is some evidence against mitigating Applicant's conduct and conditions. His relationship with alcohol resulted in three alcohol-related incidents involving police authorities and judicial authorities. He spent time in jail, paid fines, and was required to attend education classes, and alcohol counseling. Nevertheless, he continued to consume alcohol. After lengthy periods of sobriety, he experienced a number of self-described relapses.

The mitigating evidence under the whole-person concept is more substantial. Applicant has not been involved in any alcohol-related criminal conduct since 2003. There is no evidence of security violations or alcohol consumption at work. On those occasions when he was involved in the three alcohol-related incidents, he has complied with the various mandates of the courts. Applicant acknowledged that it was initially difficult for him to admit to himself and to others that he had relapsed. He finally acknowledged that alcohol may have had a negative impact on his education and employment. He admitted that there are times when he feels anxious, but he now knows that taking a drink will not assuage that anxiety. Applicant knows he needs to be vigilant and on-guard when it comes to alcohol. His earlier urges for alcohol have subsided since he started working on the 12-step program with his sponsor. He has been abstinent since June 2014, a period of over 18 months.

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.⁴⁰ Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the alcohol consumption and personal conduct security concerns. Nevertheless, this decision should serve as a warning that Applicant's failure

⁴⁰ 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).

to remain abstinent will adversely affect his future eligibility for a security clearance.⁴¹(See AG ¶¶ 2(a)(1) - 2(a)(9).)

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated and overcome the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline I:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge

⁴¹ While this decision should serve as a warning to Applicant as security officials may continue to monitor his finances, this decision, including the warning, should not be interpreted as a conditional eligibility to hold a security clearance. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions to an applicant's security clearance. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. June 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).