DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-01530
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Francis J. Flanagan, Esq.

04/19/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana from August 1998 to November 1999 and from mid-May 2013 to July 2013. He drank alcohol to excess in 2013, and was medically diagnosed with alcohol and marijuana dependence in late July 2013. He has not used marijuana since July 2013 or alcohol since July 2014, but the drug involvement and alcohol consumption security concerns are not fully mitigated. Clearance is denied.

Statement of the Case

On January 12, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug Involvement, and Guideline G, alcohol consumption, 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; 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 within the DOD on September 1, 2006.

On February 26, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 21, 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. There was some delay in scheduling the hearing due to schedule conflicts with Applicant's counsel in September 2015. After dates were discussed for a hearing either on December 2 or 3, 2015, counsel for Applicant indicated on October 30, 2015, that a planned witness would not be available on either date. On November 2, 2015, I advised Applicant's counsel that after considering travel for Department Counsel, courtroom availability, and other hearings in the region I planned to convene his client's hearing on December 3, 2015, unless he could show good cause as to why his character reference testimony would not be adequately encapsulated in writing. I indicated that I would be willing to reconvene the hearing if it should become apparent that live testimony was required from the witness to resolve a contested factual issue. On November 6, 2015, I scheduled the hearing for December 3, 2015.

At the hearing, five Government exhibits (GEs 1-5) were admitted into evidence. Applicant submitted one exhibit, a report of a substance abuse assessment (AE A), which was admitted over the Government's expressed concerns about the inability to cross-examine the clinician. Testimony was taken from Applicant and the witness discussed above, as reflected in a transcript (Tr.) received on December 18, 2015.

I held the record open after the hearing, initially until January 4, 2016, for Applicant to submit additional documentary evidence. On December 29, 2015, Applicant submitted through his counsel a letter from a human resources employee at work and emails, which were marked collectively as AE B. On January 6, 2016, counsel for Applicant forwarded a progress report from Applicant's current therapist (AE C) and a copy of a photograph of Applicant (AE D). On January 7, 2016, Department Counsel expressed some concern as to the weight to be afforded AEs B and C, but he had no objection to AEs B-D being admitted into evidence. The documents were accepted into the record as full exhibits.

At Applicant's counsel's request, I extended the record to January 7, 2016, for Applicant to submit a letter from the clinician who authored AE A. The clinician's letter, dated January 7, 2016, was marked on receipt as AE E. Department Counsel filed no response by the January 15, 2016 deadline for any objections, so AE E was admitted into the record. The record closed on January 15, 2016.

Summary of SOR Allegations

The SOR alleges under Guideline H that Applicant used marijuana weekly to bi-weekly from approximately August 1998 through November 1999 and daily from approximately July 7, 2013, through July 23, 2013 (SOR ¶ 1.a); that he used marijuana while possessing a security clearance (SOR ¶ 1.b); and that he was treated for marijuana

dependence from November 1999 through July 2000 (SOR ¶ 1.c). The SOR alleges under Guideline H (SOR ¶ 1.d) and cross-alleges under Guideline G (SOR ¶ 2.a) that he was diagnosed with alcohol dependence and cannabis dependence by a physician while in treatment from July 2013 through August 2013. The SOR also alleges under Guideline G that Applicant continues to consume alcohol despite his diagnosed alcohol dependence (SOR ¶ 2.b).

When he answered the SOR, Applicant admitted that he used marijuana as alleged, including while he held a security clearance; that he sought treatment as alleged in SOR ¶¶ 1.c and 1.d; and that he was diagnosed with alcohol dependence while being treated in 2013. Applicant denied that he continues to drink alcohol.

Findings of Fact

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

Applicant is 51 years old, and he has a bachelor's degree in computer information systems awarded in May 1995. He has been employed by his current employer, a defense contractor, since November 2002. (GEs 1, 2; Tr. 22.)

After graduating from high school in June 1983, Applicant matriculated in a public university. He did not return to the college after his freshman year. He moved to his present state of residence and began working for an information technology company. (Tr. 21-22.) Around January 1988, Applicant began studies toward an associate degree, which he earned in May 1991. In January 1989, Applicant bought his current residence. In April 1989, he and his spouse married. They have one son, who is now 18 years old. (GEs 1, 2; Tr. 19.)

While pursuing his bachelor's degree at night, Applicant worked full time for a federal contactor from September 1992 until September 1994, when he was laid off. He held a DOD secret clearance throughout that employment. Applicant worked as a computer engineer for a communications company from March 1995 to February 1996 and then in data analysis for a hospital the following year. From March 1997 until November 2002, he worked in quality assurance for a succession of private employers. (GE 2.)

In August 1998, Applicant began smoking marijuana to alleviate stress caused by marital problems and his son, who was having serious health issues at the time. (GEs 1, 4; AE A; Tr. 32-33.) He first consumed alcohol at age nine. (GE 3; Tr. 84.) Due to alcohol problems in previous generations of his family, Applicant did not want to drink alcohol so he turned to marijuana. (GE 1; AE A; Tr. 28, 36.) Applicant used marijuana weekly to a couple of times per week. (GE 4; Tr. 33.) The marijuana was provided by either his brothers (GE 4) or by his brother-in-law's best friend (hereafter Mr. X).[1] (Tr. 33.) On one occasion,

[1] At his December 3, 2015 hearing for his security clearance eligibility, Applicant testified that his marijuana use from 1998 to 1999 was also with Mr. X (Tr. 26, 33-34), which is inconsistent with what he indicated in a sworn statement provided to the DSS special agent in October 2003, when he indicated that he used

Applicant gave his brother $25 to purchase marijuana. (GE 4.) Applicant's illegal drug use exacerbated his marital problems, but it did not adversely affect his work. (GE 4; Tr. 25.)

Applicant continued to use marijuana despite its illegality and his spouse's disapproval because it helped him to relax. (Tr. 36.) He drank alcohol only about once a month. In November 1999, he realized with the help of his spouse that marijuana was becoming a problem. (Tr. 37-38.) He stopped using marijuana and voluntarily sought substance abuse treatment. He participated in an outpatient substance abuse treatment program once to twice weekly from November 9, 1999, to July 24, 2000. (GEs 1, 4; AE A; Tr. 26, 38-39, 60.) The SOR alleges that he was treated for marijuana dependence, although no medical records were presented to substantiate that diagnosis. When Applicant answered the SOR, he admitted only that he sought treatment.

On December 5, 2002, Applicant completed and certified to the accuracy of a Security Clearance Application (SF 86) for a secret security clearance with his current employer. He responded affirmatively to an inquiry into whether he had illegally used any controlled substance in the last seven years and indicated that he used marijuana 30 times between August 1998 and November 1999. (GE 2.)

On October 27, 2003, Applicant was interviewed by a special agent of the Defense Investigative Service (DIS). Applicant indicated that he smoked marijuana approximately weekly to bi-weekly in his home with two of his brothers from August 1998 to November 1999. He added that he stopped using marijuana in November 1999 when he sought outpatient counseling "because [he] did not like the effect it had on [his] life." Applicant disclosed that he has attended both Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings since completing the outpatient program. He denied any intent to use marijuana in the future. Applicant also denied any excessive or habitual use of alcohol. He added that he had mental health counseling for the past three years, but he did not elaborate about any diagnosis or the nature of his treatment. (GE 4.) Medical records of subsequent substance abuse treatment in 2013 reflect diagnosis of obsessive compulsive disorder (OCD) and anxiety disorder in the late 1990s. (GE 5.) Applicant testified that he has been on a psychiatric medication since 2000. (Tr. 37.) Applicant was apparently granted a DOD secret clearance for his duties, although the date of the clearance grant is not in evidence. (GE 1.)

Applicant stopped attending NA after his interview because he did not like the program. He had established personal relationships with others in AA, and he attended three AA meetings a week, maintaining abstinence from both alcohol and marijuana for more than a decade. (Tr. 41-42, 55.) He had been advised by his AA sponsor to not drink alcohol because it could lead him to use marijuana. (Tr. 43.)

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marijuana with two of his brothers. Applicant attributed the discrepancy to his one-time purchase of a small amount from his brother, who now lives abroad. He had visited his brother one weekend and his brother gave him some marijuana. He maintained that the rest of the time, he smoked marijuana with Mr. X. (Tr. 52-53.)

From March 2011 to June 2012, Applicant had outpatient counseling with a licensed mental health counselor (LMHC). Their sessions focused primarily on stress and anxiety. (GE 3; Tr. 61.)

Applicant stopped attending AA meetings in January 2013. He was doing well and had "that false security that [he was] cured." (Tr. 31, 55.) Applicant experienced significant stress from ongoing health issues with his mother and discord with his spouse. Isolated from AA and his sponsor, Applicant relapsed into marijuana use and excessive drinking around mid-May 2013. According to Applicant, he happened to see Mr. X at a local gas station, and he went over to Mr. X's house and smoked marijuana with him. He had seen Mr. X "only a handful of times" before their chance encounter. (Tr. 47.) Applicant does not now remember the conversation with Mr. X that led to his marijuana use, although he recalls that he smoked marijuana with Mr. X in Mr. X's home every night for three weeks. (Tr. 47-48.) Applicant drove home after using marijuana, sometimes within an hour after using the drug. (Tr. 48, 63-64.) He held a DOD security clearance at the time. (Tr. 48.) Applicant admits that he drank alcohol when he was using marijuana, but in moderation, no more than one or two beers per occasion. (Tr. 49.) He did not reach out to his AA sponsor because he felt "a lot of guilt" for using marijuana. (Tr. 57.)

On July 22, 2013, Applicant informed a human resources employee at work that he had gradually and increasingly been self-medicating to deal with pressures in his life. At the time, he was the "quality lead" for one of the more complex programs at work. He expressed a desire for medical support to help him regain control of his life by breaking his drug or alcohol habits. The human resources employee informed him about the company's Employee Assistance Program (EAP) and the application process for a formal leave of absence. The following day, Applicant informed his co-workers by email that he would be on medical leave from July 24, 2013, to August 26, 2013, "to address an urgent matter that has arisen." (AE B; Tr. 105-106.)

On July 24, 2013, Applicant voluntarily admitted himself for inpatient substance abuse treatment. Medical records from his inpatient treatment in July 2013 indicate that he first drank alcohol at age 9 and used marijuana at age 14; that he was clean and sober for seven to eight years before he relapsed in mid-May 2013; that he was drinking two fifths of alcohol and smoking three to four marijuana joints per day; and that he was spending $150 a week on marijuana and alcohol. Applicant was diagnosed by a staff physician on admission with alcohol dependence, cannabis dependence, anxiety disorder, and OCD. (GE 3.) Applicant claims that the medical record is inaccurate in that he did not use any marijuana before August 1998; abstained between November 1999 and July 7, 2013; smoked one marijuana cigarette and not three or four per day in July 2013; drank no more than one or two beers a night; and did not spend $150 a week on mood-altering substances because Mr. X gave him the marijuana at no cost to him. (AE A; Tr. 48-49, 75-79.) When asked to explain the discrepancies, Applicant stated that he told clinicians that he tried alcohol at an early age and told them about his substance abuse in July 2013. (Tr. 77.) Claiming that the inpatient provider likely exaggerated his alcohol and drug problem ("the worst-case scenario") for his treatment to be covered, Applicant expressed an understanding that inpatient treatment is covered at two or three days at a time unless

there is "a bigger, larger issue."[2] (Tr. 79-80.) Applicant then admitted that he relapsed in mid-May 2013 but only in that he drank alcohol. He verified the accuracy of most of the other information in the medical record, including details about his family, employment, psychiatric history. (Tr. 85-89.) Applicant has had a copy of the medical record since late 2014, but he has taken no steps to address the claimed inaccuracies with the treatment provider. (Tr. 81.)

According to a summary of his inpatient treatment, which Applicant signed, he was motivated to address his marijuana and alcohol addiction issues, and he was an attentive participant in all therapy groups. His spouse and son demonstrated their commitment to his sobriety by attending a three-day intensive family program with Applicant. At discharge, Applicant's counselor indicated that Applicant had a "solid foundation for recovery," but gave him a guarded prognosis, pending compliance with his aftercare plan. Applicant planned to return to the LMHC for individual counseling and to work the AA steps with the help of his sponsor. (GE 5.) Applicant resumed individual therapy with the LMHC on August 20, 2013, initially four nights a week. (GE 3.) When he returned to work after his treatment, he informed his then supervisor that he had experienced issues with stress. (Tr. 107.)

On October 16, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (QNSP). Applicant responded affirmatively to an inquiry concerning any illegal use of a drug or a controlled substance in the last seven years and indicated that he "smoked marijuana daily from July 7, 2013, thru July 23, 2013 (17 days)." He explained that he was "under enormous stress from family health issues, marital issues, and work," and that after using marijuana for two weeks, he checked himself into treatment for 26 days. He added that since completing the substance abuse treatment, he has participated in an intensive outpatient therapy program, attends AA daily, and has a sponsor. Applicant responded "Yes" to a QNSP inquiry into whether his reported drug use occurred while he possessed a security clearance.[3] Applicant also answered "Yes" to whether he had ever voluntarily sought counseling or treatment as a result of his illegal use or drugs or controlled substances. He disclosed his 26-day inpatient treatment from July 24, 2013, through August 18, 2013, and his previous participation in an outpatient program from November 9, 1999, to July 24, 2000. Applicant listed his 2013 treatment in response to whether he had voluntarily sought counseling or treatment as a result of his use of alcohol. (GE 1.)

On December 9, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM), who then completed a report including the following details. Applicant indicated that he has had intensive outpatient treatment four nights per week since September 2013. Applicant stated that he was diagnosed with

[2] Applicant admitted that he had not contacted the treatment provider about the information in his medical record which he believes is inaccurate, even though he thought about doing so. (Tr. 81.)

[3] Applicant contradicted himself on his October 2013 application for security clearance eligibility in that he responded "No" to whether the U.S. Government had ever investigated his background or granted him security clearance eligibility but responded "Yes" to whether he possessed a security clearance when he illegally used a drug in the last seven years.

substance abuse during his inpatient treatment in 2013 but his prognosis is good. As for his illegal drug use in the last seven years, Applicant related that from July 7, 2013, to July 23, 2013, he used one joint of marijuana daily with Mr. X, who provided the drug, but that he no longer has any contact with Mr. X. He denied any dependence on the drug since completing treatment and any intent to use marijuana in the future. Applicant denied ever taking a drug test,[4] and any adverse impact on his work, judgment, finances, or personal relationships apart from making his spouse unhappy. Applicant denied any abuse of alcohol and explained that he was treated for alcohol abuse because he had consumed beer while using marijuana. Applicant expressed his belief that he does not have a problem with alcohol, although he also indicated that his use of alcohol led to his use of marijuana. He expressed intent to continue to drink alcohol "lightly" in the future. (GE 3.)

Applicant consumed alcohol on three occasions after he completed the inpatient treatment. He drank one glass of sangria to celebrate his niece's 30th birthday, a glass of champagne around June or July 2014, and consumed alcohol on July 12, 2014. (Tr. 44-45.) He obtained a new sponsor in AA in July 2014, who advised him that he was better off abstaining completely because of the alcoholism in his family. (Tr. 45.) Three of Applicant's four siblings have alcohol and drug issues. (Tr. 58-59.)

On September 24, 2014, DOHA sent Applicant a copy of the OPM investigator's report of his October 2013 interview. On October 7, 2014, Applicant verified the accuracy of the information as reported, but added, "Since going to AA after rehab, I have quit drinking altogether." He indicated that he was still in counseling with the LMHC. (GE 3.) Applicant had his last session with the LMHC in 2014, although he continued to receive mental health counseling from a clinician in the same practice until August 2015. (Tr. 62, 70.) Applicant ceased his mental health counseling because he was going to AA four nights a week, talking to his sponsor daily, and had other activities. (Tr. 62.)

On January 12, 2015, the DOD CAF issued an SOR to Applicant because of his marijuana abuse and alcohol abuse to the point of medically diagnosed dependence. Sometime after he received the SOR, Applicant informed his facility security officer (FSO) at work that he had used marijuana. (Tr. 106.) He testified initially that he did not realize that he had an obligation to self-report the issue to his security office at the time. (Tr. 50.) He later admitted that he had not told his FSO or his supervisor in 2013 about his substance abuse treatment "probably for the fear of repercussions of having that statement of being a drug addict and alcoholic, and having it used against [him] in the future." (Tr. 107.)

Sometime after March 2015, Applicant sought a substance abuse assessment from a licensed clinical social worker (LCSW) with experience in substance abuse and mental health counseling. (Tr. 70.) Applicant met with the clinician on four or five additional occasions, including in November 2015.[5] Applicant reported that he relapsed into

[4] Applicant testified discrepantly that he tested positive for marijuana during his treatment in 2013. (Tr. 67.)

[5] Applicant provided the LCSW with his security clearance application. He initially testified that he did not provide the medical records of his outpatient treatment in 1999 or his inpatient treatment in 2013. (Tr. 72.) He

marijuana, his drug of choice, in July 2013, after 13 years of abstinence. Applicant denied any use of alcohol after he completed his inpatient treatment. He reported subsequent alcohol use on three occasions, with his last use being on July 12, 2014, before he decided to abstain from alcohol in the future, given his family history and the chance alcohol could become his drug of choice. Objective indicators and testing showed minimal signs of an alcohol problem (e.g., no evidence of blackouts, no attendance problems, and no work performance issues). On November 20, 2015, the LCSW concluded that Applicant did not meet the criteria for a diagnosis of dependence for either alcohol or marijuana. However, Applicant met the minimum standard for abuse of marijuana in that he continued to use marijuana despite persistent social or interpersonal problems, which included some minor marital disputes. Applying the criteria in the Diagnostic and Statistical Manual of Mental Disorders, 5th edition (DSM-V), the LCSW opined that Applicant would be considered to have a mild substance abuse disorder. In his professional assessment, Applicant did not show any signs of alcohol or marijuana dependence, now or in the past. (AE A.)

After his security clearance hearing, Applicant asked the LCSW to clarify some of the concerns raised by his November 2015 assessment. On January 7, 2016, the clinician indicated that he thoroughly reviewed the summary of Applicant's inpatient treatment in 2013. He expressed his disagreement with the 2013 diagnoses of alcohol and marijuana dependence in that Applicant had never shown, to his knowledge, a marked increase in tolerance from usage or any signs of withdrawal symptoms. (AE E.)

Applicant now admits that he had a problem with alcohol, but he denies any adverse impact on his standing in his community or his finances. (Tr. 28.) His family and friends know that he is no longer consuming alcohol. Applicant testified that he is at social functions where alcohol is present "all the time." (Tr. 59.) When asked whether he wants an alcoholic beverage, he either does not drink or responds that he does not drink because he is an alcoholic. (Tr. 29.) Applicant indicates that he has not had any contact with Mr. X since July 28, 2013, despite the fact that they live within two miles of one another. (Tr. 51.)

As of December 3, 2015, Applicant was attending three AA meetings and one Al-Anon meeting per week. He has an active sponsor in AA, whom he contacts daily. (Tr. 31, 62, 73.) Applicant is a member of a local organization whose purpose is to help adolescents abstain from alcohol and illegal drugs. (Tr. 20.) Applicant has also become involved in a project that helps find suitable rehabilitation programs for persons with substance abuse problems. (Tr. 30-31.) He now understands that he needs to go to AA for the rest of his life because he has "a disease that's—never can go away and it can come up at any time." (Tr. 32, 63.) Applicant remains on a psychiatric medication for his diagnosed anxiety and OCD. (AE A; Tr. 37.)

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subsequently testified that he provided a copy of his 2013 treatment records to the LCSW. (Tr. 81.) However, the clinician did not make any specific reference to the treatment record in his report of evaluation dated November 20, 2015. (AE A.) On January 7, 2016, the LCSW addressed some of the concerns raised by Department Counsel during the hearing. The LCSW indicated then that he referenced the DSM-IV in his report of November 2015 in that he was "making comparisons to the similar diagnosis from [the 2013 treatment]." (AE E.) The LCSW had reviewed the records of Applicant's 2013 treatment as of January 7, 2016, if not by November 20, 2015.

Applicant is involved in his local Boy Scout organization. (Tr. 21.) His scouts know about his drinking problem, but Applicant has not told them about his marijuana use. (Tr. 65.) When asked whether his illegal drug use was against Boy Scout policies, Applicant responded that he was not sure whether it was prohibited for adults. When pressed, Applicant acknowledged that illegal drug use would be inconsistent with the example leaders should show their scouts, but he continued to maintain that he did not use the drug when the scouts had meetings or activities. (Tr. 57, 65-66.)

On December 11, 2015, Applicant began outpatient substance abuse counseling with a new counselor. As of early January 2016, Applicant was compliant with his treatment. He was attending AA regularly, and he reported working with a sponsor. He had taken weekly toxicology screens, which were negative for all substances tested. (AE C.) Applicant has AA tokens marking one year of abstinence from alcohol and two years of abstinence from marijuana. (AE D.)

Applicant has no record of disciplinary infractions or security violations with his defense-contractor employer. In 2015, he received three team achievement awards for outstanding performance. (Tr. 73, 98.) Applicant's supervisor since July 2014 previously worked with Applicant from 2009 until 2011, when the supervisor moved to another facility. (Tr. 101.) Around February 2015, Applicant informed his supervisor that he had used some marijuana and had some alcohol issues for which he obtained treatment. (Tr. 93-95, 99-100.) This supervisor does not know when Applicant had treatment or the details of Applicant's substance abuse. (Tr. 95, 101-103.) He had never observed Applicant to be under the influence of alcohol or drugs while at work and has seen no negative impact on Applicant's job performance. They have not worked at the same facility since 2011, and he has in-person contact with Applicant only once every two or three months. (Tr. 103.) Applicant was known as "pretty much a leader in the business." (Tr. 95.) He rated Applicant's work performance as exceeding expectations for 2015. (Tr. 96.) This supervisor does not believe Applicant's security clearance should be revoked. (Tr. 98.) To his understanding, employees with security clearances are required to self-report any compromising information, such as illegal drug use. He is unaware whether Applicant reported his marijuana use to his immediate supervisor at the time. (Tr. 101.)

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 H, Drug Involvement

The security concern for drug involvement is articulated in AG ¶ 24:

> Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Under AG ¶ 24(a), drugs are defined as "mood and behavior altering substances," and include:

> (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and
>
> (2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." Both disqualifying conditions AG ¶ 25(a), "any drug abuse," and ¶ 25(g), "any illegal drug use after being granted a security clearance," are clearly established. While there is some evidence that Applicant tried marijuana as a teenager, the record is silent as to any subsequent abuse until August 1998. He then used the drug weekly to bi-weekly to November 1999. Applicant relapsed in 2013 while he held a DOD clearance. Despite medical record information reporting that he relapsed into alcohol and marijuana use in mid-May 2013, Applicant now claims that he relapsed initially by using alcohol only in mid-May 2013. Applicant is assumed to have provided accurate information about his substance abuse when he sought treatment. If he had been using marijuana for only a couple of weeks and not months as of his admission into treatment, it stands to reason that he would have said so. He has denied any attempt to exaggerate his drug abuse to obtain treatment. Whether he relapsed first into alcohol or into both marijuana and alcohol in mid-May 2013 as reflected in the medical record, he raised serious doubts about his judgment and reliability by using marijuana while he held a DOD clearance and knowing of its illegality.

Likewise, Applicant denies that he purchased marijuana beyond giving his brother $25 one time when he was using marijuana in 1998 and 1999. Records of his inpatient treatment from 2013 indicate that he was spending $150 a week on alcohol and marijuana. He maintains that all the marijuana he used in 2013 was provided to him free of charge by a friend (Mr. X), and that since he was drinking only a few beers, he was not spending $150 a week on mood-altering substances. His present claim cannot be reconciled with the medical record, even assuming that he received most of his marijuana at no cost. There is an evidentiary basis to apply AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," beyond Applicant physically possessing marijuana on the occasions of his use, but the primary concern is his use of marijuana while holding a security clearance.

AG ¶ 25(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence," must be considered in that Applicant was medically diagnosed with marijuana dependence on his admission to inpatient substance abuse treatment in July 2013. There is evidence of conflicting professional opinion from a LCSW, who had six clinical sessions with Applicant as of January 7, 2016, and assessed Applicant as meeting the criteria for a mild substance abuse disorder as to Applicant's past marijuana use. About the weight to be afforded the respective diagnoses, it is reasonable to infer that a physician affiliated with a substance-abuse treatment facility would be well qualified to assess substance use disorders. The dependency diagnosis is bolstered by its contemporaneity with Applicant's drug abuse. There is no evidence that the diagnosis changed by the time of Applicant's discharge. The summary of Applicant's treatment, which Applicant signed, indicates that he "entered treatment to address his addiction to alcohol and marijuana." Use of three or four joints of marijuana per day would tend to substantiate the diagnosis of dependency. I have considered as possible but rejected as unlikely that the medical provider exaggerated Applicant's marijuana use to ensure financial coverage for Applicant's care.

Misrepresentation of Applicant's clinical presentation would be a serious breach of medical ethics. One would expect Applicant to have taken some steps to broach any such serious inaccuracy with the treatment facility and he has not. The LCSW's recent assessment was based on six sessions with Applicant two years later, after Applicant had the benefit of the inpatient program and AA. Applicant's evidence falls short of refuting the 2013 medical dependency diagnosis that implicates AG ¶ 25(d). In any event, the LCSW's diagnosis of marijuana abuse would raise significant security concerns. *See* AG ¶ 25(e) "evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program."

Concerning factors in mitigation, Applicant's marijuana abuse from August 1998 to November 1999 cannot be viewed in isolation from his daily use of marijuana from mid-May 2013 to late July 2013, which was very recent as of his completion of his October 2013 QNSP. AG ¶ 26(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," does not apply in this case.

Applicant denies any intent to use marijuana in the future. After completing an outpatient treatment program for his abuse of marijuana from August 1998 to November 1999, Applicant provided a sworn statement to a DSS agent in October 2003 in which he indicated that he did not intend to use marijuana in the future. However sincere his commitment at that time, he became complacent in his recovery and stopped attending AA in January 2013. When he relapsed in mid-May 2013, it was into use multiple times daily for months, not days. Given the seriousness of his relapse, he has a heavy burden to demonstrate that there is little likelihood of recurrence. Under AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," can be shown by:

> (1) disassociation from drug-using associates and contacts;
>
> (2) changing or avoiding the environment where drugs were used;
>
> (3) an appropriate period of abstinence; or
>
> (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's unrebutted but also uncorroborated testimony is that he has disassociated himself from Mr. X, who was both his source of marijuana and his companion in its use in 2013, if not also from 1998 to 1999. To the extent that AG ¶¶ 26(b)(1) and 26(b)(2) apply, they do not fully mitigate the drug involvement concerns. When Applicant was interviewed in October 2003, he provided a sworn statement in which he indicated that his drug use in 1998 and 1999 occurred with two of his brothers, who provided the drug. At his December 2015 hearing, Applicant testified discrepantly Mr. X was involved in his marijuana use in 1998 and 1999 as well as in July 2013. About his relapse in 2013, Applicant claimed that he had a chance encounter at a gas station with

Mr. X; that he had seen Mr. X only a handful of times before then when they did not even converse (Tr. 47); and yet that encounter led Applicant to visiting Mr. X and smoking marijuana with him daily for 17 days. Mr. X lives within two miles of Applicant. When asked what prevents them from again meeting each other, Applicant described Mr. X as "a hermit." He had described Mr. X as "a friend" in the past. (GE 3; Tr. 51.) The risk of Applicant renewing his association with Mr. X cannot be completely ruled out in light of their history.

As for an appropriate period of abstinence, Applicant had not used marijuana in almost 2.5 years as of his security clearance hearing in December 2015. That time is not long enough in and of itself to preclude a recurrence, given that a decade of abstinence with AA involvement had not prevented Applicant's relapse into daily use of marijuana in 2013.

Concerning AG ¶ 26(d), "satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional," Applicant completed an outpatient substance abuse treatment program in July 2000. He also had individual therapy with a LMHC from March 2011 to June 2012 with a focus on stress, the underlying cause of Applicant's marijuana abuse. He began taking psychiatric medication around 2000 to address his anxiety and OCD. These treatments were supplemented by AA three or four times a week. Applicant benefitted from these efforts at rehabilitation, as evidenced by his sustained abstinence for over a decade. However, AG ¶ 26(d) requires no recurrence of abuse. Applicant's relapse in 2013 removes AG ¶ 26(d) from consideration.

Applicant is credited with seeking treatment for his marijuana abuse in late July 2013, when he realized marijuana had again become a problem. The summary of his inpatient treatment shows that he was an active participant in his recovery; that Applicant was able to share his experience from AA and show a solid foundation for his recovery. Even so, his prognosis at discharge was "guarded, pending [his] compliance with [his] aftercare plan." Applicant reports that he followed up with his LMHC, although he stopped attending individual therapy around August 2015. It is unclear whether he was formally discharged with a good prognosis, or whether he stopped attending against clinical advice. After he received the SOR, he sought an evaluation from a LCSW. The LCSW rated Applicant's past substance abuse problems as mild with minimal negative consequences. Largely based on Applicant's self-report, the LCSW indicated that Applicant has been proactive in his treatment and in 12-step groups. Even if I accept the LCSW's assessment as a favorable prognosis under AG ¶ 26(d), Applicant has not met his burden of overcoming the security concerns raised by his illegal drug involvement.

In addition to Applicant's present disavowal of the medical record information indicating that he smoked marijuana three to four times a day and purchased marijuana, he provided conflicting accounts about his drug use from 1998 to 1999 as to whether he used the drug with his brothers or with Mr. X. He told an OPM investigator in October 2013 that he never had a positive drug screen, but he testified at his December 2015 hearing that he

tested positive for marijuana at the treatment facility in 2013. The Government does not demand perfection, and some lack of recall is to be expected because of the passage of time. Yet, Applicant undermines his reform when he attempts to downplay the concerns about his marijuana involvement by claiming that it was less extensive than reported in medical records or that it did not pose a problem with his scouting obligations because he did not use marijuana when the scouts were active.[6] He showed little appreciation for his obligation as a cleared employee by engaging in illegal drug use while holding a DOD clearance. Doubts linger as to whether Applicant can be counted on to abide by his intent to abstain in the future, notwithstanding his commitment to AA and his return to substance abuse counseling after his December 2015 hearing. The drug involvement concerns are not fully mitigated.

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 first consumed alcohol when he was only nine years old. However, alcohol did not become a problem for him until later in life. During his interview with the DSS agent in October 2003, Applicant denied any excessive drinking or any alcohol-related problems. Treatment records from Applicant's inpatient treatment in July 2013 indicate that he was drinking about two fifths of alcohol per day (GE 3), which is a considerable amount if accurate. He now asserts that he drank only one or two beers per occasion, and that the treatment provider exaggerated his alcohol use for insurance coverage. While he considers

[6] Applicant exhibited an unacceptable level of justification even about his use of marijuana as an assistant scout leader, as shown by the following exchange between Applicant and Department Counsel.

> A: The boy scouts know about my alcoholism, because the assistant scoutmaster is also in the program.
> Q: How about the drug use, though? That seems like a different thing.
> A: No. I did not mention the drug use to them.
> Q: That seems in conflict with the boy-scout principles, and obviously, the Order of the Arrow. Is that right? The marijuana use?
> A: Only during—the only thing that they say is you cannot use during events, there's no alcohol or drug use during events.
> Q: So, the boy scouts—
> A: There's nothing that says anything about—for adults there's nothing that says abstinence. For the kids yes, but for adults—
> Q: I'm talking about the drug use, not the alcohol use. It's obviously completely prohibited by the boy scouts for any sort of drug use; am I right?
> A: For children, yes. I'm not sure about for the adults. (Tr. 65-66.)

In response to my question whether drug use would be inconsistent with the example scout leaders are expected to show their scouts, Applicant responded, "That is correct. And I never used illegal drugs." (Tr. 66.) Applicant may well have not used marijuana around the boys in his troop, but it does not make his marijuana use any less illegal or problematic as a clearance holder or scout leader.

himself to be an alcoholic, he asserts it is not because of his drinking habits. Rather, after learning about "behaviors and the mental thought process behind addictions in general, whether it be marijuana and/or alcohol . . . [he] could see that [he] could have those tendencies either way." (Tr. 43.) Consumption of two fifths of alcohol within a few hours could trigger 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."[7] Whether or not AG ¶ 22(c) applies, drinking about 51 ounces of alcohol per occasion tends to substantiate the diagnosis of alcohol dependency.

The diagnosis of alcohol dependency by his attending physician in 2013 establishes AG ¶ 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence." The LCSW who conducted an evaluation of Applicant in November 2015 found no evidence that Applicant satisfied any of the criteria for dependency, but I cannot easily ignore the opinion of a treating physician. As for Applicant's drinking after that diagnosis (SOR ¶ 2.b), Applicant consumed alcohol in moderate amount on three occasions. To the extent that any drinking of alcohol after rehabilitation for medically diagnosed dependency is considered a relapse, AG ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program," applies.

Mitigating condition AG ¶ 23(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," is difficult to apply because of Applicant's abusive drinking in 2013. Nonetheless, alcohol was a secondary drug for him. He is credited with pursuing treatment before his alcohol use led to any legal or job problems. On the advice of his sponsor, he stopped drinking alcohol in July 2014 and has continued in AA for the support to avoid relapse. Applicant's successful completion of the inpatient treatment program followed by more than a year of abstinence with regular AA meetings is evidence of efforts to overcome his drinking problem. Two mitigating conditions under AG ¶ 23 are established in part because of his treatment and abstinence with ongoing AA:

> (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

[7] 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 NIAAA National Advisory Council in February 2004. *See* U.S. Dept. of Health and Human Services, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism (NIAAA) Newsletter 3 Winter 2004 No.3.

> 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(b) requires an individual to acknowledge his issues of alcohol abuse. In that regard, Applicant testified that he considers himself an alcoholic and that it is to his benefit to completely abstain from alcohol. He presented evidence of a one-year AA coin marking his sobriety. The LCSW who evaluated Applicant in November 2015 had no concerns about Applicant's drinking history. Applicant's new substance abuse counselor indicates that Applicant has been compliant in all areas of his treatment, although it is unclear whether the focus of their outpatient sessions has been on marijuana or alcohol or both. Applicant's hearing testimony that he drank no more than one or two beers per sitting preceding his 2013 inpatient admission could be evidence of denial of an alcohol problem, or more likely of an attempt on his part to downplay his drinking in 2013 out of fear that it could cost him his clearance and possibly his job. Applicant is certainly credited with obtaining treatment for his substance abuse problem, but his reform is inadequate to the extent that he is unwilling or unable to provide a consistent account of his alcohol abuse history. The alcohol consumption concerns are not fully mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of 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 H and G are incorporated in the whole-person assessment of Applicant's security eligibility, but some factors warrant additional comment. Applicant has a very good work record with his employer with no evidence of ever being impaired on the job because of marijuana or alcohol. He sought treatment for his marijuana and alcohol abuse on his own, before his substance abuse had legal or occupational consequences. He admitted on his October 2013 QNSP that he abused marijuana in July 2013 while he held a security clearance. Those factors weigh in his favor under the whole-person evaluation.

At the same time, Applicant's abuse of marijuana while holding a security clearance was inconsistent with the sound judgment and reliability that must be required of persons entrusted with classified information. Given his many years of experience with AA, one would expect him to fully acknowledge the extent of his alcohol and marijuana problems and not seek to justify or minimize them. Applicant was less than fully forthcoming about his substance abuse history at his hearing. Applicant claims that he told his supervisor and several co-workers about his substance abuse problems, but his supervisor testified to knowing little of the details. 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 continue Applicant's eligibility for a security clearance.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant[8]
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge

[8] Treatment, especially when it is undertaken voluntarily, is viewed favorably. However, SOR ¶¶ 1.d and 2.a are found against Applicant because of the concerns about his reform of his marijuana and alcohol dependency, respectively.