



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 07-10169
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esq., Department Counsel
For Applicant: Judy L. Kibodeaux, Personal Representative

May 12, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guidelines I (psychological conditions) and G (alcohol consumption). Clearance is granted.

Statement of the Case

On July 14, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines I and G for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 28, 2009. DOHA received his Answer on February 2, 2009. Department Counsel was prepared to proceed on June 30, 2009. The case was assigned to another administrative judge on July 1, 2009. On July 30, 2009, DOHA issued a notice of hearing scheduling the hearing for August 25,

2009. On August 23, 2009, the administrative judge previously assigned to the case notified all parties by e-mail that the case was cancelled due to counsel unavailability. On July 30, 2009, DOHA issued a notice canceling the hearing scheduled for August 25, 2009. On September 1, 2009, the case was reassigned to me. On September 15, 2009, DOHA issued a notice of hearing scheduling the hearing for October 27, 2009. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which were received without objection. The Applicant offered Applicant Exhibits (AE) Items 1 through 9, which were received without objection, and he testified on his own behalf. DOHA received the hearing transcript (Tr.) on November 4, 2009.¹

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a., 1.b., 1.c.(2), 1.d.(3), 1.d.(4), 1.d.(6), and 2.a., and denied the remaining allegations. His admissions are accepted as findings of fact.

Background Information

Applicant is a 41-year-old electronics technician, who has been employed by a defense contractor since May 2006. He seeks a secret security clearance, which is a condition of his continued employment. (GE 1, Tr. 45-47, 53.)

Applicant graduated from high school in May 1987. He attended college from August 1988 to December 1988 and estimates that he earned “nine or twelve” credit hours. (Tr. 46.) Applicant served in the U.S. Navy from January 1990 to November 1990, and was awarded an honorable discharge. He held a security clearance during his brief period of naval service. (Tr. 51-52.)

He was married from December 1988 to May 1992. That marriage ended by divorce. He remarried in November 1994. Two children were born during his first marriage -- his daughter is 20 years old and his son is 18 years old. He has a six-year-old son from his current marriage. Applicant was granted full custody of his two children from his first marriage in 1998. Applicant’s oldest daughter is married and living on her own and his two youngest children are living at home. Applicant’s wife works full-time for a local insurance agency. (Tr. 42-43, 48-50.)

Psychological Conditions/Alcohol Consumption

To obtain a clearance, Applicant completed an e-QIP in July 2006. In doing so, he reported, among other things that he had consulted with a mental health professional for anxiety and depression. (GE 1.) This self-disclosure prompted an inquiry into Applicant’s mental health history, which ultimately lead to an SOR being issued.

¹ Applicant’s personal representative had previously marked her exhibits with her own marking system.

Applicant has been fighting depression for the better part of his adult life. The SOR alleges in ¶ 1.a. that Applicant received mental health counseling from Dr. A (specialty unknown) as a teenager (dates unknown) for stress-related medical problems. Applicant testified that he saw Dr. A “at about 16 years of age or so” for “reoccurring stomach issues.” He saw Dr. A “for a few months” and “did get better.” (Tr. 63-64.)

The next time Applicant sought professional help for depression occurred in approximately 2003 when he consulted with Dr. B (internal medicine).² Dr. B prescribed Paxil, the first in a series of anti-depressant drugs that Applicant’s physicians would try as they tried to find the right medication for his condition.³ (AE Item 3A, AE Item 3D.)

Applicant saw Dr. B for approximately two to three years from 2003 to 2006, but stopped seeing her because “it was hard to get in to see [her].” Medical records completed in November 2005 reflect Dr. B’s diagnosis of Applicant as (1) anxiety, (2) panic attacks, and (3) insomnia, secondary to above. (Response to SOR, AE Item 3A, Tr. 66-67.)

After seeing Dr. B, Applicant began seeing Dr. C (family practice) for his depression in 2006 through the present. Medical records completed in January and August 2007 reflect Dr. C’s diagnosis of Applicant as (1) depressive disorder and (2) depression with anxiety. (SOR ¶ 1.b.) Under the care of Dr. C, Applicant is currently taking aspirin, Toprol (blood pressure), Zoloft (antidepressant), and Xanax (anxiety). He has been taking these medications for at least the last 12 months and has no intention of discontinuing their use. (Response to SOR, GE 2, Tr. 67-68, 125.)

Salient points in chronological order regarding Applicant from Dr. C’s medical records reflect: (1) March 2006 “depressed mood for more than 6 months,” (2) April 2006 “depressed mood [m]uch better on meds,” (3) December 2006 “depressed mood better on current rx,” (4) July 2007 “still very depressed and panic d/o. not going to psyc any more. On no meds,” (5) August 2007 “Life is stable, mood is much improved, doing well, very stable, now. No signs of major depression,” (6) August 2008 “Insight: good judgement. Mental Status: active and alert,” (7) December 2008 “Insight: good judgement. Mental Status: active and alert,” (8) February 2009 “Insight: good judgement. Mental Status: active and alert, normal affect.” (GE 2, AE Item 3.)

As noted *supra*, Dr. C made reference to Applicant no longer seeing a psychologist (Dr. D). Dr. C had referred Applicant to Dr. D. Applicant saw Dr. D for a brief time from February 2007 to April 2007. During that time, Dr. D evaluated Applicant and in April 2007 medical records reflect his diagnosis as (1) major depression, moderate to severe, chronic; (2) probable panic disorder without agoraphobia (anxiety

² Dr. B’s involvement with Applicant is not reflected in the SOR.

³ Record evidence reflects that Applicant was prescribed the following medications over the years for depression and anxiety: (1) Paxil – prescribed in 2003; (2) Wellbutrin – prescribed in March 2006; (3) Lexapro – prescribed in December 2006; (4) Alprazolam (generic for Xanax) – prescribed in April 2006; (5) Sertraline (generic for Zoloft) – prescribed in December 2008; and (6) Lamotrigine (generic for Lamictal) –prescribed in September 2008. (AE Item 3D.)

about being in places or situations from which escape might be difficult (or embarrassing) or in which help may not be available); and (3) alcohol abuse. (SOR ¶ 1.c.) Applicant denied having “chronic to severe major depression” adding that he had experienced a phase of depression and dealt with his problem by seeking professional help. He also denied the alcohol abuse allegation. (Response to SOR.)

Salient points in chronological order regarding Applicant from Dr. D’s medical record reflect: (1) February 2007 “Insight appears fairly good. Judgement functions are fair to hypothetical situations. On a gross clinical basis, intellectual functions appear within normal limits,” and (2) February 2007 “He responds well to brief CBT [cognitive behavioral therapy];” “I have also reviewed his MMPI [Minnesota Multiphasic Personality Inventory] studies with him. These show a moderate level of depression one with anxiety and some [s]omatization [patients who chronically and persistently complain of varied physical symptoms that have no identifiable physical origin].” There is no evidence of psychosis or more malignant psychopathology [mental distress and abnormal, maladaptive behavior].” (GE 3, AE Item 4.)

The Government retained the services of a Dr. E (psychiatrist) to conduct a psychiatric evaluation of Applicant for his pending security clearance. Dr. E completed his evaluation in September 2009 and provided a provisional diagnosis of Applicant as follows: (1) major depression, recurrent, moderate, without psychosis; (2) dysthymic disorder history; (3) panic disorder without agoraphobia; (4) generalized anxiety disorder; (5) alcohol abuse; and (6) nicotine dependence – full, sustained remission. The doctor also noted he had concerns for Applicant’s judgment and reliability. (SOR ¶ 1.d.)

Applicant adamantly denied the accuracy of this diagnosis stating:

Subparagraph d: (1) “I deny” – I deny having chronic to severe major depression. Response: I do admit of going through a phase of it and having a “midlife” crisis. I did not know how to handle it on my own so I sought the advice of a medical doctor; he put me on medication to help control the panic. At the time of this second interview my only issue was mood stabilization; this report did show **recurrent moderate without Psychosis**; I do not understand how one can suffer bouts of panic and anxiety and then be diagnosed as chronic severe major depression by one doctor after a thirty minute session. It appears the second doctor used the first doctors records, then after careful consideration changed the diagnosis to **recurrent moderate**, and then used his diagnosis as Alcohol Dependent, after I told him I have not consumed any alcohol beverage since April 2008. I feel that he made no attempt to gather adequate records from my medical doctor and paid no attention to what I told him.

(2) **“I deny”** this diagnosis of “Dysthymic Disorder” based on definition, “a chronic condition by depressive symptoms that occur for most of the day, more days than not, for at least 2 years. During this

period, **any symptom free interval cannot last longer than 2 months.”**
I usually go for 6 to 8 months without attacks.

(3) **“I admit”** to having a panic disorder. I have panic and anxiety attacks. Approximately 2.4 million American adults have panic disorder. (National Institutes of Mental Health).

(4) **“I admit”** to having Generalized Anxiety Disorder. More than 19 million American adults have an anxiety disorder. (National Institutes of Mental Health).

(5) **“I deny”** being an alcoholic or alcohol abuse. I drank one to two times per week, most all on weekends only. In my younger days, ages 25 – 30 I admit to drinking more heavily. At the time of this diagnosis, I had not drunk anything in over 6 months.

(6) **“I admit”** I smoked for almost 20 years and quit in August of 2007. Not sure what importance that has on my clearance. (Response to SOR. Emphasis added by Applicant.)

Dr. E was called as a witness by the Government.⁴ Dr. E stated that he prepared his evaluation after interviewing Applicant and reviewing the records of Drs. B, C and D as well as Applicant’s e-QIP and a list of his medications. (Tr. 71.)

Although Dr. E’s evaluation appears to be thoughtful and well written, there are at least two factual discrepancies that are incorrect and appear to have factored into his diagnosis. First, his evaluation makes reference to Applicant’s past consumption of alcohol as being rather heavy, i.e. “[Applicant] reports drinking a 1/5th of Jim Beam once per week prior to this. In the past, he says that he was drinking up to 1/5th of Jim Beam every other day.” (GE 5, AE Item 6.) Applicant’s testimony, the testimony of his wife, and past medical records dispute this. Applicant and his wife testified that he had not had a drink since April 2008. Applicant’s wife emphatically stated, “[Applicant’s] never had a fifth of whiskey every other day, ever.” Applicant reported that he told Dr. E that he quit drinking during his interview. Additionally, the fact that Applicant had quit drinking was reported in Dr. D’s medical records and corroborates the testimony of Applicant and his wife. Dr. E apparently adopted or concurred with Dr. D’s diagnosis of alcohol abuse, which was somewhat dated at the time Dr. E evaluated Applicant. Dr. E added that the discrepancy in Applicant’s alcohol consumption would not make a difference in his diagnosis given “the rest of the information in the record.” (Response to SOR, GE 3, AE Item 4, Tr. 32-34, 56-58, 94-95.)

Additionally, Dr. E reported in his recommendations that Applicant was not taking any medications for his symptoms. This fact is contradicted by Applicant’s testimony and by Dr. C’s medical records, which state Applicant is taking medications as prescribed by Dr. C. (GE 2, GE 5, AE Item 3, AE Item 6, Tr. 124-125, see *also* fn 3, *supra*.)

⁴ Dr. E’s testimony was offered by way of speaker phone in the hearing room.

At the conclusion of his testimony, Dr. E added:

I usually don't add things, but what I would like to say is, at the end of this interview, my concern was that he (Applicant) get treatment and he abstain from alcohol, *and that I'm not qualified to determine whether his chance of lapsing in judgment will impair a specific or cause problems for a specific security risk*, but I think that there is treatment and the anxiety and depression come under full control, that quite often people can do well. And I just wanted to – that was what – my point at the end of this. But I was concerned, as we've talked about, for those – for the preceding reasons. That's all I needed to say (emphasis added). (Tr. 106.)

On September 10, 2009, Drs. B and C stated in writing that Applicant's mental status does not impair his ability to protect any classified information which may be given to him by the Department of Defense. As previously noted, Applicant sought treatment from Dr. B from 2004 to 2006 and Dr. C began treating Applicant in 2006 until the present.

Applicant's wife testified on his behalf. I found her testimony to be credible. She and Applicant have been together 17 years. She stated Applicant quit drinking on April 4, 2008. Before he quit drinking, she estimated he drank a half a pint to a pint of whiskey on the weekends. She is familiar with his drinking habits because she prepared his drinks. Applicant's drink of choice was a mixed drink of whiskey and Dr. Pepper. She added that she never experienced family problems as a result of Applicant's drinking. Applicant has never had an alcohol-related driving offense. She never felt in danger as a result of his psychological conditions. She stated Applicant sought ministerial help from their local church to cope with depression and anxiety. He also has a network of family and friends to rely on for additional help. Applicant's wife emphasized that Dr. E's report of Applicant consuming a fifth of whiskey every other day is completely erroneous. She further stated Applicant is involved with their children. He has had to have his medications adjusted over the years and is currently under the care of Dr. C. (Tr. 18-44.)

Applicant testified on his own behalf. I found his testimony to be credible. The last drink Applicant had was in April 2008. He described his former drinking habits as drinking a pint of whisky (mixed drinks) on the weekends. Applicant also described the various medications he was prescribed over the years to control his depression as well as his reactions to those medications. Applicant did not particularly find his experience with Dr. D favorable, but does enjoy a good rapport with Dr. C, his current physician, and follows his advice. He described the ministerial counsel he received from his local church which included listening to a CD program "Attacking Anxiety and Depression." He is taking the medications prescribed by Dr. C and has no intention of discontinuing their use. Applicant addressed and disputed the discrepancies in his medical records regarding his past use or purported alcohol abuse, as well as Dr. E inaccurately reporting that he was not taking medications. (Tr. 45-68, 108-134.)

Character Evidence

Applicant submitted six reference letters, which are summarized:

1. Current supervisor and system analyst – He has known Applicant since 2006. He described Applicant's work ethic and dedication as "above reproach." Contract changes resulted in cutting company positions from twelve to eight and "only the best remained to maintain the highest efficiency rating." He concluded by saying that Applicant is an asset to the company and he would like to keep him as a member of his team. (Response to SOR, AE Item 7.)

2. Co-worker and electronics technician – He has known Applicant since 2006. He described Applicant as an employee who has "many times contributed greatly to the high caliber of mission readiness." Applicant is more than capable of handling any task that is assigned to him in an efficient and professional manner. He concluded by saying that Applicant is a well liked and well respected individual with an "undying dedication to the men and women of our armed services . . . of whom we train." (Response to SOR.)

3. Friend and co-worker – He has been a friend of Applicant for 16 years and a co-worker since 2005. He described Applicant as a trusted and reliable person that he and his family can depend on in time of need. Applicant no longer drinks or smokes, is very hard working, dependable, and reliable. Applicant is a family man and is involved with his children. Applicant is "very level headed" and "never let his medical problems . . . interfere with his work." He concluded by saying that Applicant's "dedication to his family, God, work and friends is inspirational" and that he was honored to know him and call him a friend. (AE Item 7.)

4. Previous employer (owner and supervisor) – He was Applicant's previous employer from 2001 to 2005. Applicant was employed as the manager of his business, which consists of providing coffee machines, and coffee, party supplies, and janitorial supplies to local businesses. He stated Applicant supervised two employees and had direct contact with his customers. Applicant was responsible for daily deposits, keeping the books, paying the bills, and performing payroll functions. Applicant always presented himself in a professional manner. Applicant is very dependable and a model employee. He concluded by saying "[Applicant's] knowledge, trustworthiness, dedication, dependability, work ethics, and professionalism was evident in his everyday activities and makes him the kind of employee you would be honored to have, and I would hire again." (AE Item 7.)

5. Previous co-worker and friend – He worked with Applicant when Applicant was employed at his previous employer from 2001 to 2005. He stated Applicant went out of his way to see that each customer was fully satisfied with company products and services. Applicant was professional, treated people fairly, and gave his best effort to the businesses he served. Applicant was dedicated to his family, job, and customers and did not let his anxiety or panic attacks affect his ability to do his job. Applicant is "the kind of person one is proud to associate with and work with" and "I would gladly work with [Applicant] again." (AE Item 7.)

6. Friend and co-member of Masons – He is a 25-year friend of Applicant. He has associated with Applicant frequently during that time span and stated that Applicant has never been an alcoholic. Applicant has not had a drink since April 2008. Applicant “works very hard at controlling the depression that comes with the panic attacks, and is determined that this will not control his life. His faith in God has been his sustaining strength, and he is under the care of a good physician. He is taking medication prescribed by his doctor.” Applicant is very involved with his family in all respects whether it is attending a sporting event or taking his children to the doctor. Applicant is the Master of their local Mason’s Lodge and presides over approximately 65 men. He is so well regarded at the Lodge that he was asked to serve an additional term as Master. He concluded, “the world is a better place in which to live because of [Applicant’s] dedication to God, family, work, and friends. I am proud to say that [Applicant] is my friend and co-mason.” (AE Item 7.)

Applicant submitted a certified copy of his police record that reflects he does not have any adverse information on his driving record or have a criminal record. (AE Item 7.)

Policies

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.

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 overarching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 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.

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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude two relevant security concerns under Guidelines I and G are applicable.

Psychological Conditions

AG ¶ 27 articulates the security concern relating to psychological conditions:

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.

AG ¶ 28 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case:

(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;

(b) 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; and

(c) the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

The Government produced sufficient evidence warranting application of AG ¶¶ 28(a), (b), and (c). Applicant was diagnosed by Dr. E (Government psychiatrist) with major depression, recurrent, moderate, without psychosis; dysthymic disorder history; panic disorder without agoraphobia; and generalized anxiety disorder. Dr. E also noted that Applicant was not taking any medications for his symptoms. These factors raise concerns under this Guideline and warrant further inquiry.

Five psychological conditions mitigating conditions under AG ¶¶ 29 are potentially applicable:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) 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;

(d) the past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

I find that AG ¶¶ 29(a) and 29(b) fully apply to Appellant's case. His condition is readily controllable with treatment. He has been under the care of Dr. C since 2006 and is taking his prescribed medications. Before that, he was under the care of Dr. B from 2004 to 2006. Although Dr. E's (Government psychiatrist) report is not particularly favorable, he did state in his testimony that patients with depression can do quite well with treatment. Dr. C (Applicant's current physician) clearly supports the notion that Applicant is doing well. Applicant has also sought and received ministerial support from his church as well as family support. His wife's testimony and his references provide

persuasive evidence covering 25 years of his personal and professional life. All of these individuals report that Applicant's condition is under control and is properly monitored and managed. Drs. B and C are most familiar with Applicant, unlike Dr. D, who saw him for about three months in 2007 and Dr. E who saw him for a relatively brief one-time evaluation. I find the opinions rendered by Dr. B and C more persuasive given their extensive history with Applicant. Since at least 2003, Applicant has voluntarily sought professional help and followed his attending physician's (Dr. C's) treatment plan, which includes taking his medications. According to Drs. B and C, Applicant's condition is amenable to treatment. Dr. C's most recent medical notes state that Applicant's insight reflects good judgment and his mental status is active and alert with normal affect. In sum, his prognosis is good.

Applicant's superb employment record, family life and community involvement paint a picture of stability. Applicant has learned how to cope with his depression as noted by the evidence he presented. Dr. C noted Applicant's good judgment and that Applicant was not suffering from major depression. In September 2009, Drs. B and C, doctors most familiar with Applicant, stated that his mental status does not impair his ability to protect classified information. Based on my evaluation of the record evidence as a whole, I conclude Applicant has mitigated the concerns raised under psychological conditions.

Alcohol Consumption

AG ¶ 21 articulates the security concern relating to alcohol consumption:

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.

AG ¶ 22 provides two potentially disqualifying conditions that could raise a security concern and may be disqualifying in this case:

(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; and

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

The primary focus of this case centers on Applicant's psychological conditions. Alcohol consumption concerns collaterally arose apparently after a psychologist reviewed Applicant's medical records. Alcohol consumption concerns were identified as a result of information contained in Drs. D and E's evaluations. Dr. D, who Applicant saw for three months, and Dr. E, who Applicant saw for a one-time evaluation, both diagnosed Applicant as an alcohol abuser based on heavy alcohol consumption. These diagnoses sufficiently raised disqualifying conditions under AG ¶¶ 22(c) and (d).

Four alcohol consumption mitigating conditions under AG ¶¶ 29 are potentially applicable to these disqualifying conditions:

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

Assuming *arguendo* that the diagnosis of alcohol abuse is based on accurate information, AG ¶¶ 23(a) and (b) fully apply. Applicant's descriptions of his alcohol consumption have been consistent. He acknowledged his alcohol consumption in the past. Applicant has not had a drink since April 2008 and has established a sufficient period of abstinence. He leads a life of total sobriety. As noted, Applicant adamantly disputes the accuracy of his purported past alcohol consumption, particularly as reported by Dr. E, and has successfully rebutted those inaccuracies. Applicant's work behavior has not been indicative of his having an alcohol problem. He is considered a valuable employee, who is reliable, dependable, and professional. In any event, Applicant is under the care of Dr. C, who is monitoring his overall condition. AG ¶¶ (c) and (d) are not relevant.

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 carefully weighed all evidence and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines in light of all the facts and circumstances surrounding this case. Applicant is a mature and a well-grounded member of his community and a dedicated family man. He honorably served in the Navy, albeit for a short period of time. He has worked for his employer since May 2006. He has the full support of company management as well as the support of his former employer. Except for the pending allegations, there is no evidence of questionable behavior by Applicant.

Applicant has been willing to do whatever is necessary to manage his depression and he ended his alcohol consumption in April 2008, two years ago. His struggle has not always been easy, yet he continues to persevere. Drs. D and E's evaluations of Applicant are not favorable; however, when comparing the basis of their diagnoses with that of Drs. B and C, who have treated Applicant for years, I am inclined to give greater weight to the latter. I also gave considerable weight to Applicant's testimony, the testimony of his spouse, and his reference letters. These letters covered the range of professional, personal, and community involvement. When balancing the evidence pro and con, I find the scale weighs in Applicant's favor.

Additionally, Applicant has significant family and church support, stable employment and a strong work ethic. Applicant demonstrated the correct attitude and commitment to his condition. Considering his demeanor and testimony, I believe Applicant recognizes the importance of maintaining his treatment plan and managing his depression. In sum, I find Applicant has sufficiently mitigated security concerns raised.

Overall, the record evidence convinces me of Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his psychological conditions and alcohol consumption security concerns.

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"⁵ and

⁵ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has mitigated or 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 I:	FOR APPLICANT
Subparagraphs 1.a. – 1.d.:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a. – 2.c.:	For Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge