DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-08723
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana from 1978 to at least August 2006, and consumed alcohol to excess from about 1979 to at least April 2007. He was arrested five times between May 2004 and August 2006 on domestic abuse, alcohol, or marijuana-related charges. He abstained from alcohol and illegal drug use since being treated for alcohol dependence in 2007, but he has been lax in his commitment to Alcoholics Anonymous (AA) of late. He deliberately did not disclose his marijuana involvement or his alcohol treatment on his April 2008 security clearance application. He also owes about $125,000 in medical debt that he does not intend to repay. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 22, 2008. On June 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline J, Criminal Conduct, Guideline G, Alcohol Consumption, Guideline H, Drug Involvement, Guideline E, Personal Conduct, and Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him

a security clearance. 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 as of September 1, 2006.

Applicant submitted an undated response to the SOR, which was received by DOHA on August 25, 2009. He requested a hearing, and on September 30, 2009, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 16, 2009, I scheduled a hearing for November 17, 2009.

I convened the hearing as scheduled. Fourteen Government exhibits (Ex. 1-14) were entered into evidence. Exhibits 1 and 4, consisting of the police reports of Applicant's respective arrests in May 2004 and May 2005, were admitted over his objections. The reports were admissible under ¶ E3.1.20 of the Directive. Applicant's claim of police bias as to Exhibit 1 was not established. Objections on the basis of hearsay as to Exhibit 4 were taken into account in assessing the weight afforded the information. Applicant testified, as reflected in a transcript received on November 25, 2009.

Findings of Fact

The SOR alleged under Guideline J, Criminal Conduct, that Applicant was arrested in May 2004 for domestic breaking and entering, domestic disorderly conduct, and willful trespass, which led to a no contact order (SOR 1.a); that he was arrested and convicted in June 2004 for driving while intoxicated (DWI), first offense (SOR 1.b); that he was arrested in May 2005 for domestic-simple assault, for which he received a suspended one-year prison sentence and one-year probation, and for domestic-refusal to relinquish telephone (dismissed) (SOR 1.c); that he was arrested and found guilty of a June 2005 domestic vandalism/malicious injury to property charge (SOR 1.d); and that he was arrested and convicted of two counts of marijuana possession after having consumed alcohol in August 2006 (SOR 1.e).

The June 2004 DWI and August 2006 marijuana possession and refusal to submit to chemical test offenses were cross-alleged (SOR 2.b.) under Guideline G,[1] Alcohol Consumption. Applicant was also alleged under Guideline G to have consumed alcohol at times excessively from at least 1979 to at least 2007 (SOR 2.a) and to have received treatment for diagnosed alcohol dependence from about February 23, 2007, until May 22, 2007 (SOR 2.c).

Under Guideline H, Drug Involvement, the SOR alleged that Applicant used marijuana from about 1978 to at least 2006 with varying frequency, to include a period of three to four times weekly use (SOR 3.a), and that he was convicted of the August 2006

[1]Presumably, the August 2006 charges were cross-alleged under Guideline G because the available information showed that Applicant consumed alcohol before his arrest.

marijuana possession charges (SOR 3.b). Alleged Guideline E, Personal Conduct, concerns related to false negative responses to the illegal drug use and alcohol treatment questions on his e-QIP (SOR 4.a, 4.b).

Under Guideline F, Financial Considerations, the SOR alleged that Applicant owed $127,826 in medical debt that had not been satisfied by March 2009 (SOR 5.a-5.i). Applicant denied those allegations because they were related to health issues and were "personal."

Applicant did not dispute the allegations under guidelines J, G, H, and E, although he asserted that he had been sober for over two years and was doing well in his recovery. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 47-year-old college graduate, who has worked as a mechanical technician for a defense contractor since April 2008. He seeks his first Department of Defense security clearance. (Tr. 12, 64.)

Applicant worked in the fishing industry starting at age 16 until he went off to college at about age 25. (Tr. 58.) From 1988 to 1992, he attended college on a U.S. Department of Energy (DOE) scholarship. (Ex. 12, Tr. 59.) He married in August 1991. After he earned his bachelor's degree, he went to work for the DOE, where he was granted an "L" clearance (Ex. 12.) In 1993, he and his ex-wife had a daughter. In 1994, they had a son. (Ex. 12, Tr. 60.) Applicant was laid off from his government employment in 1996. He and his ex-spouse worked as substitute teachers until 1997, when they moved for her to attend graduate school. school. Applicant stayed at home to care for their children. (Tr. 60-61.) In May 2000, Applicant and his ex-wife divorced. (Ex. 12.) Applicant returned to his present locale, where he owned a home (Tr. 58, 61, 65),[2] and to a "fishing life" that included abuse of alcohol and marijuana. (Tr. 61.) He was a self-employed commercial fisherman on a succession of fishing boats from October 2000 to October 2006, and from March 2008 to at least April 2008. (Ex. 12.)

Applicant's history of illicit drug involvement started around 1978 or 1978. He smoked marijuana once weekly from around 1978 or 1979 until 2000, and then three or four times per week until sometime in 2006. He also tried several other illegal drugs although no heroin. (Tr. 119.) Following an arrest for illegal marijuana possession in August 2006, he ceased his illegal drug involvement. (Ex. 11.) In October 2008, he was prescribed Vicodin for pain following a dental procedure. He used the drug as prescribed, but he also felt that he was abusing it since he needed to take only a couple of pills for pain and he took all 20 prescribed. (Tr. 116-17.)

Applicant abused alcohol with varying frequency from about 1979 to April 2007, with some periods of heavy use and binge drinking. From about 1979 until 1984, Applicant consumed liquor once weekly, to intoxication a few times per month. He

[2]Applicant testified that he worked hard in the fishing industry, and bought his first house when he was 19. At the age of 24, he purchased a home for his family because they had been renting. (Tr. 58.)

abstained from alcohol for the next few years, but following back surgery in 1984, be became addicted to prescribed codeine. (Tr. 124.) From 1987 to until 1989, he drank two or three beers or wine or both on the weekends, a few times per month, becoming intoxicated on occasion. He limited his drinking to moderate levels of gin a couple times per month from 1989 to 1997. From 1997 to 2000, he consumed three or four glasses of wine a few times a week, becoming intoxicated a few times each month. From 2000 to about June 2005, Applicant drank gin three to four times per week, in quantities ranging from three to ten drinks and regularly to intoxication.[3] He then drank at least two or three drinks twice or three times weekly at times until April 15, 2007.[4] (Ex. 10, 11, Tr. 61.)

Applicant continued to abuse primarily alcohol (Tr. 70.), but he also smoked marijuana despite a familiarity with AA starting in 2000. (Tr. 72.) He was arrested five times for various offenses between May 2004 and August 2006. In May 2004, Applicant had an argument with a girlfriend. He had entered her home with a key but without her permission, and he was arrested on a warrant about four hours later for domestic breaking and entering in a dwelling house without consent, for domestic-disorderly conduct, and for willful trespass. (Ex. 1, 11.) Applicant was suspected of being under the influence of alcohol. (Ex. 1.) When searched incident to his arrest on a warrant, the police found a marijuana pipe containing marijuana residue on him. The domestic breaking and entering charge was dismissed, and the willful trespass charge was filed, although a no contact order was issued. He was fined $200 for marijuana possession but that charge was expunged. (Ex. 11.)

In June 2004, Applicant was pulled over by the police for a stop sign violation. He had consumed about three alcohol drinks earlier, and he failed field sobriety tests. He was charged with misdemeanor DWI, first offense, with a blood alcohol level between .08% and .10%. (Ex. 2, 11.) In August 2004, he pleaded no contest, and was sentenced to a fine of about $750, community service, and 30 days loss of license.[5] (Ex. 3, 11.)

In May 2005, Applicant was arrested on charges of domestic assault and domestic refusal to relinquish a telephone involving a former girlfriend. He threw her against the wall, tore off her clothes during an argument, prevented her from using her cell phone, and blocked her exit. (Ex. 4, 11.) Ten days later, he pleaded no contest to a misdemeanor charge of domestic simple assault, and was sentenced to one year in prison (suspended), one-year probation, and domestic abuse counseling. The other charge was dismissed. (Ex. 5, 11.)

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[3]Applicant testified that he engaged in binge drinking around 2004. (Tr. 123.)

[4]Applicant now indicates that he felt coerced into signing an affidavit (Ex. 11) detailing the extent of his drinking and marijuana abuse. But he also testified that his drug use and alcohol consumption were much worse than what was recorded in the affidavit. (Tr. 121.) When asked for details, he indicated that the reality was not worse but different. (Tr. 122.) There is no evidence that suggests a motive for the investigator to report other than what Applicant told him, and Applicant signed the affidavit.

[5]When asked whether there were other occasions where he drank too much and drove a vehicle where he was not caught, Applicant responded, "I would assume that I drank every other time, didn't get caught." As for whether he was under the influence of alcohol in the five criminal incidents, Applicant testified, "I would say yeah." (Tr. 127.)

In June 2005, Applicant was charged with domestic vandalism and malicious injury to property belonging to his then girlfriend, with whom he had a four-year relationship. They had consumed alcohol at a bar together earlier that evening, but she became angry with him and went home. Applicant showed up at her house and they argued when she refused him entry. "Infuriated" with her, Applicant threw a rock through a window of her car. He was arrested a few hours later, and held without bail for two days for violating his probation for the May 2005 domestic assault. (Ex. 5, 6, 7, 11.) In July 2005, he pleaded no contest to one count of misdemeanor domestic vandalism and was sentenced to one year in prison, suspended, one-year probation, domestic abuse counseling, restitution, and court costs. A no contact order was also issued. (Ex. 7, 11.) For violating his probation, he was sentenced to six months house confinement. (Ex. 5, 11.)

In August 2006, Applicant was pulled over by the police after he hopped a curb. Applicant exhibited signs of being under the influence of alcohol or drugs or both (moderate odor of alcohol on breath, bloodshot, watery, and glassy eyes, slurred speech), and he failed field sobriety tests. He had consumed alcohol and smoked marijuana earlier that evening. After he was placed in custody, the police found a full marijuana cigarette in a container of tobacco, and "burnt down" marijuana cigarettes in the center console of his vehicle. Applicant refused a chemical test, but a field test on the marijuana was positive for the drug. Applicant was charged with possession of marijuana, first offense, and refusal to submit to a chemical test (second offense due to the earlier DWI). In October 2006, he pleaded no contest to misdemeanor marijuana possession, and was placed on one-year probation. The misdemeanor criminal charge of refusal to submit to a chemical test was dismissed. (Ex. 8, 9, 11.) He was also issued civil citations for refusal to submit to a chemical test (second offense) and obedience to traffic control devices. In December 2006, he was fined $75 for the traffic control device citation. The refusal to submit to a chemical test was dismissed due to an error in the paperwork. (Ex. 8.)

Applicant had a serious medical emergency in October 2006, when he had no medical insurance (Tr. 61-62). He incurred a hospital debt of $120,776 (SOR 5.a) and other medical debts totaling $4,753. In about June 2007, Applicant paid two of the smaller debts totaling $316 (not alleged in the SOR) that had been in collection since February 2007. In June 2007, the rest of the smaller debts (SOR 5.b-5.f, 5.h, 5.i),[6] which ranged from a low of $29 to $2,630, were referred for collection. In September 2007, the hospital placed Applicant's account for collection with a balance due of $120,776 (SOR 5.a). He contested the debt balance as excessive without success. (Tr. 62.) As of March 2009, none of the medical debts were paid. (Ex. 13, 14.)

[6]Alleged in SOR 5.f and 5.g are two separate medical debts of $2,630 with the same account numbers but for the last digit. The evidence does not conclusively establish whether SOR 5.g represents a duplicate listing by the credit bureaus or is an additional balance. The Government presented no information about the identity of the original creditor.

His medical problem led him to realize that he had an alcohol problem.[7] (Tr. 73.) Because of his substance abuse offenses, Applicant was referred by the state to a licensed substance abuse program, where he received treatment for diagnosed alcohol dependence from February 23, 2007, until May 22, 2007. His treatment consisted of individual sessions, AA meetings, and random drug screens, which were negative for drugs tested. He attended AA regularly, up to 10 to 12 meetings per week (Tr. 71.), although he apparently relapsed while in treatment, as he dates his sobriety from April 15, 2007. (Tr. 118.) At discharge, his alcohol dependence was in remission, and it was recommended that he abstain from alcohol, avoid high risk situations, continue his AA attendance, and call his counselor in the event of a relapse. (Ex. 10, 11.)

Applicant began his defense contractor employment in April 2008 at $12 an hour. (Tr. 99.) His attendance at AA declined to twice a week because of his second shift work schedule. (Tr. 71.) On April 22, 2008, Applicant completed an e-QIP on which he disclosed his arrests for drunk driving in August 2004, for domestic simple assault in May 2005, and for misdemeanor marijuana possession in August 2006. In response to the financial delinquency inquiries, he listed medical debt in collection totaling $127,276. He answered "No" to question 24.a concerning whether he had illegally used any controlled substance, including marijuana, within the last seven years, and to question 25 concerning whether his use of alcohol had resulted in any alcohol-related treatment or counseling in the last seven years. (Ex. 12.) Applicant feared that an affirmative response to the drug inquiry would negatively affect his employability with the defense contractor. (Tr. 102.) He did not disclose his alcohol counseling because he had been sober and felt "[his] life was going in a different direction." (Tr. 103.)

A check of Applicant's credit on May 2, 2008, revealed not only the medical debts, but also that he had settled other accounts in collection for less than their full balances. A credit card with a high credit of $977 had been settled in December 2006. In November 2006, he settled a retail charge account that had been referred for collection for $9,300. (Ex. 13.)

On October 23, 2008, Applicant was interviewed by a government investigator about his arrests, his illegal drug involvement, and his alcohol abuse and treatment. Applicant indicated that his last use of marijuana was in 2006 and he did not intend any future use. As for his alcohol consumption, Applicant related that he last drank alcohol in 2007, was involved in AA, and had no future plans to consume alcohol. (Ex. 11.)

As of November 2009, Applicant was attending a couple of AA meetings per week. He had a sponsor in AA for the past three years. (Tr. 71-72.) Applicant had not formally completed any steps of the AA program, although he had identified his character defects and spoken about them to his AA sponsor. He contacted his sponsor once weekly and others in the AA program daily (Tr. 131-32.) Applicant felt he had a good network within the AA fellowship to help him maintain sobriety. At work, Applicant did not have a network of fellow attendees to confide in. Some coworkers drank alcohol on the

[7]Applicant testified that he would not describe his use of mood-altering substances other than alcohol as abusive. (Tr. 125.)

job or discussed drinking and partying ("They are all talking about partying all the time and drinking and partying and you're like oh, this sounds fun."). (Tr. 128-29.) It had not led Applicant to relapse into substance abuse (Tr. 130), although Applicant admitted that he had not been attending as many AA meetings as he should of late ("I've been laxing [sic] a lot lately though, not going to as many meetings as I should and it's all because of my schedule, it's not a good schedule and I make excuses not to go, and that could eventually lead me to drinking so. . . .") (Tr. 133.) At his hearing, he produced for perusal two AA coins from his home group marking his two years of sobriety. (Tr. 136-37.) He does not intend to drink alcohol or to use an illegal drug in the future.

As of November 2009, Applicant's hourly wage was $18.60. (Tr. 73.) He owed about $240 for two medical debts that he had neglected to pay in addition to the medical debts alleged in the SOR. (Tr. 74-75.) He had not resolved any of the debts because he considered the charges excessive ("I have a problem with thinking about the value because of exorbitant pricing . . . ."). (Tr. 76-86.) When asked at his hearing whether he intended to repay his medical debt, Applicant responded, "I don't have a logical answer for you right now." (Tr. 87.) He had not contacted his creditors about resolving his medical debt since shortly after he received treatment (Tr. 83-84.), and he had not heard from collection agencies in the past two years about those debts. (Tr. 88.) About 55% of his net income went to his mortgage loan that he was repaying at $1,000 per month. (Tr. 93, 96.) Applicant was seeking to refinance his mortgage to lower the interest rate from eight percent so that he could put a new roof on the house. (Tr. 89-91.) Applicant was not under any court order to pay child support, although he was giving his ex-wife $200 or $300 a month for his children. (Tr. 94.) He had an estimated $600 in savings, but he also testified that he had "zero" discretionary income after paying his monthly expenses. (Tr. 95.)

Applicant enjoys his job with the defense contractor. He testified that he was productive and received maximum raises. (Tr. 63) In about October 2009, he was suspended one day from work after his supervisor charged him with not reporting on his time card that he had left work. (Tr. 138.)

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 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 that 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

Criminal Conduct

The security concern for criminal conduct is set out in Guideline J, AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant contests the validity of the May 2004 charges, including for domestic breaking and entering, on the grounds that he was living with his girlfriend, had entered the premises with a key so did not need permission, and he was not convicted. (Tr. 112.) Dismissed charges can be considered in evaluating an applicant's security suitability under AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." Furthermore, there is evidence that undercuts his claim of no trespass. The address listed for him on the police report is his current address and not her address. Furthermore, even assuming they were cohabiting, Applicant acknowledged during his subject interview in October 2008

that he entered without his girlfriend's permission. Applicant does not dispute the other offenses. He was caught driving a motor vehicle with a blood alcohol content between .08% and .10% in June 2004. In May 2005, he physically assaulted a former girlfriend during an argument, for which he was sentenced to one year in prison (suspended), and one-year probation. Then, in June 2005, he vandalized the car of a longtime girlfriend. In August 2006, he was in possession of marijuana when placed in custody on suspicions of driving under the influence of alcohol or illegal drugs or both. AG ¶ 31(c) and AG ¶ 31(a), "a single serious crime or multiple lesser offenses," apply. Furthermore, because the June 2005 domestic vandalism was in violation of his probation for the May 2005 assault, AG ¶ 31(e), "violation of parole or probation, or failure to complete a court-mandated rehabilitation program," is also pertinent.

With the passage of over three years since his latest arrest, Applicant would appear to satisfy mitigating condition AG ¶ 32(a), "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." The absence of any recurrence since he began his defense contractor employment in April 2008 is evidence of reform under AG ¶32(d), "there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement." However, I cannot fully apply either AG ¶ 32(a) or ¶ 32(d) in light of his deliberate misrepresentations on his April 2008 e-QIP (*see* Guideline E).The deliberate falsification of his e-QIP is felonious conduct under 18 U.S.C. § 1001.[8]

[8]Title 18, Section 1001 of the United States Code provides as follows:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B,110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years. (b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding. (c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to - (1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or (2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

Alcohol Consumption

The 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.

In addition to the DWI offense, alcohol was involved in the June 2005 domestic vandalism offense because Applicant had been drinking in a bar before that arrest. 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 pertinent. Furthermore, Applicant engaged in binge drinking within the meaning of 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," when he consumed regularly to intoxication and in quantity of up to ten gin drinks at a sitting. In addition, AG ¶ 22(e), "evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program," applies. Applicant received outpatient treatment for diagnosed alcohol dependence in a state licensed substance abuse program from February 23, 2007 to May 22, 2007.

Applicant apparently drank while in treatment at some point, since he dates his sobriety from April 15, 2007. (Tr. 118.) Despite his present two-plus years of abstinence, I cannot give controlling weight in mitigation to 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," because of the seriousness of his alcohol problem. As set forth in AG ¶ 23(b), an applicant with diagnosed alcohol dependence should acknowledge his or her alcoholism or issues of alcohol abuse, show evidence of actions taken to overcome the problem, and establish a pattern of abstinence.[9] Applicant admits his abusive relationship with alcohol, including binge drinking around 2004. He considers alcohol "the worst drug there is" (Tr. 127.), and relies on others involved in AA to help him cope with the lack of support for his sobriety at work. He was compliant with his alcohol treatment, and his ongoing affiliation with AA is evidence of continued actions taken to overcome his alcohol dependency problem. AG ¶ 23(b) applies, but its weight in mitigation is not compelling, given his testimony that he has been lax in his AA attendance of late.

His successful completion of counseling with abstinence since April 2007 and participation in AA satisfies the treatment and aftercare requirements set out in AG ¶ 23(d):

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[9] AG ¶ 23(b) specifically states: "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)."

> 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.

As for the favorable prognosis required for mitigation under AG ¶ 23(d), the only treatment record available for review, the discharge summary from May 2007, does not specifically state a diagnosis. However, Applicant's counselor assessed Applicant's completion as successful and his dependency in remission as of May 2007. The program director signed off on that assessment. No further treatment was recommended apart from AA. Certainly, Applicant's burden of showing reform would have been well served by a more recent favorable prognosis from a certified medical professional or a licensed clinical social worker, or had he testified that he was working the AA steps with his sponsor. His AA coins marking two years of sobriety demonstrate some commitment on his part to AA and to remaining free of alcohol and illegal drugs, but given the decline in his AA attendance of late, his failure to work the AA program with his sponsor, and the absence of a recent prognosis from a qualified professional, I am unable to fully apply AG ¶ 23(d). Alcohol consumption concerns are not sufficiently mitigated.

Drug Involvement

The security concern for drug involvement is set out 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),[10] 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."

[10]Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance.

Applicant abused marijuana about once a week from 1978 or 1979 until 2000, and three to four times per week thereafter until about August 2006, when he was arrested for illegal possession. He apparently also had a marijuana pipe with residue on him when he was arrested in May 2004, for which he was fined, before the offense was expunged. AG ¶ 25(a), "any drug abuse," and AG ¶ 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," are pertinent.

The regularity of his marijuana abuse over several years precludes favorable consideration of AG ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is likely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Concerning whether Applicant has demonstrated an intent to forego future drug abuse sufficient to satisfy AG ¶ 26(b), "a demonstrated intent not to abuse any drugs in the future," there is little to no information in the available record about the friends with whom he used marijuana, or how he obtained the marijuana that he smoked. For example, it is unclear whether he smoked the marijuana at times alone in his home. His marijuana use apparently continued after he was married, while he was working for the DOE,[11] and also while he remained at home to care for his young children. It was not just confined to the fishing lifestyle, which he described as an extreme lifestyle given to "maybe binge drinking and such." (Tr. 61.) He has not detailed efforts taken, if any, to change or avoid the environments where he used drugs (*see* AG ¶ 26(b), stating "changing or avoiding the environment where drugs were used"), although his affiliation with AA tends to indicate that he is not knowingly associating with drug-using associates and contacts (*see* AG ¶ 26(b(1), stating "disassociation from drug-using associates and contacts"). When compared to his 27 years of marijuana involvement, his present three-plus years of abstinence falls short of "an appropriate period of abstinence" under AG ¶ 25(b)(3), especially given his testimony about his use of Vicodin in October 2008.

Even extensive drug abuse can be mitigated under AG ¶ 26(d) by "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 denies that his alcohol rehabilitation treatment also included counseling for illegal drugs (Ex. 11.). Although AG ¶ 26(d) does not strictly apply, insights gained into abusive behaviors, triggers, and high risk situations involving alcohol could be beneficial in achieving sustained abstinence involving other mood-altering substances like marijuana. Applicant has not abused any illegal drug since he received alcohol treatment. Random drug screens taken during the alcohol treatment program were negative. Concerning his possible abuse of prescribed Vicodin in October 2008 following a dental procedure, Applicant took more pills than he needed to alleviate his pain ("You get prescribed 20 pills, you only need one or two, what

[11]According to his e-QIP, Applicant was granted an "L" clearance for his work with the DOE in 1992. In his October 2008 affidavit, he indicated that he smoked small amounts of marijuana about once a week with friends from 1978 or 1979 until 2000. (Ex. 11.) This time frame covers his emp[oyment with the DOE, so he may have smoked marijuana while he held a DOE clearance. *See* AG ¶ 25(g), "any illegal drug use after being granted a security clearance."

do you do with the other 18?"). He showed some insight into substance abuse risks, in that he struggled with the decision, but it did not stop him from taking all of the pills prescribed, including when he no longer needed them for pain. Applicant has not relapsed into alcohol or drug abuse, but his work environment presents a risk of relapse ("They are all talking about partying all the time and drinking and partying and you're like oh, this sounds fun."). (Tr. 128.) More time is required before I can safely conclude that his substance abuse, alcohol and drugs, is safely in the past.

Personal Conduct

The security concern for personal conduct is set out in Guideline E, AG ¶ 15:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant deliberately falsified his e-QIP by not disclosing his treatment for alcohol dependency from February to May 2007 or his abuse of marijuana, which had been three to four times per week until 2006. Applicant admitted that he did not list his illegal drug involvement because it would negatively impact his employment with the defense contractor. He did not disclose his alcohol treatment because he felt it was personal information, and his life was going in a different direction. AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," applies.

Applicant's disclosures of his alcohol treatment and his extensive marijuana abuse history during his interview in October 2008 are not mitigated under AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." There is no indication that Applicant volunteered the information up-front, before being questioned, even if his rectification five months after his e-QIP is considered timely. At his hearing, he maintained he felt coerced into signing an affidavit that was "fabricated." Yet when asked to detail his concerns in that regard, Applicant responded that his drug use and alcohol consumption were in reality "much worse." Whether Applicant deliberately minimized the extent of his substance abuse in his affidavit, or provided approximations that are not completely accurate, doubts linger about whether he can be counted on to provide full and frank information to government inquiries without regard to his personal interests.

As noted under Guideline J, a knowing and willful false statement on a security clearance application can be punished as a felony offense. Applicant's intentional concealment of his substance abuse is too serious and recent to be mitigated under personal conduct AG ¶ 17(c), "the offense is so minor, or so much time has passed, or

the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." He shows little to no remorse for his false statements, so I also cannot apply AG ¶ 17(d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur." Furthermore, his reform of the personal conduct concerns is undermined by his recent suspension at work following an issue involving his timecard. Assuming Applicant notified his supervisor in person that he was leaving work, he apparently did not follow his company's policies regarding the reporting of hours worked.

Financial Considerations

The security concern for finances is set out in AG ¶ 18:

> Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant had some delinquent accounts placed for collection that he settled in or before 2006. As of June 2009, Applicant owed about $125,529 in delinquent medical debt from a medical emergency in October 2006. He did not intend to repay the debt because he considered the treatment costs exorbitant. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are pertinent to an evaluation of his security eligibility.

Of the potentially mitigating conditions, AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," applies in that the debts alleged in the SOR were the result of a serious medical problem that required immediate treatment when Applicant did not have insurance. But Applicant has not acted responsibly under the circumstances. Understandably, with his hourly pay at $18.60, he is unable to resolve the $120,766 hospital debt in the reasonably foreseeable future without a bankruptcy or the creditor agreeing to settle for a significantly lesser amount. But neither his financial situation or his personal disagreement with the cost of the medical services excuses his failure to make reasonable attempts to reach some accommodation with his creditors. He has not contacted his creditors about resolving his medical debt since about late 2006, including those debts of only $58, $87, and $29 that he could afford to repay. He owes another $240 for two medical debts not related to his treatment in October 2006 that he "neglected to pay." (Tr. 74.) Although these two debts were not alleged in the SOR, one has to question Applicant's financial judgment in not satisfying these obligations when he knew the Government was concerned about his

financial situation. His disregard of repayment obligations that he considers exorbitant is incompatible with holding a security clearance. The Government must be assured that those persons granted access can be relied on to comply with their legitimate obligations. His satisfaction of two medical debts of $34 and $298 in June 2007 is considered a self-initiated "good-faith effort to repay overdue creditors or otherwise resolve debts" of the type contemplated within AG ¶ 20(d), but this mitigating condition does not apply to most of his delinquent debt. Nor is his satisfaction of these two minor debts sufficient to mitigate the financial concerns under AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control."

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 relevant circumstances in light of 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.

Applicant displayed poor judgment in several different aspects over the last 30 years. He physically assaulted a former girlfriend, used marijuana for many years in disregard of its illegality, drank alcohol to the point where he developed a serious alcohol problem, lied on a security clearance application to protect his employment prospects with a defense contractor, and continues to ignore debt obligations that were not incurred voluntarily, but benefitted him. Following his arrest for illegal marijuana possession in August 2006, he was referred to an alcohol treatment program that led him to a cessation of his abusive drinking and his drug involvement. But his admission to taking Vicodin when he did not need it for pain in October 2008 is troubling, especially when he admits he has been lax in his commitment to AA of late. His intentional falsification of his security clearance application and his knowing disregard of his delinquent debts continue to raise concerns about his overall judgment and reliability. Based on the record, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant
Subparagraph 4.b:	Against Applicant
Paragraph 5, Guideline F:	AGAINST APPLICANT
Subparagraph 5.a.:	Against Applicant
Subparagraph 5.b:	Against Applicant
Subparagraph 5.c:	Against Applicant
Subparagraph 5.d:	Against Applicant
Subparagraph 5.e:	Against Applicant
Subparagraph 5.f:	Against Applicant
Subparagraph 5.g:	For Applicant
Subparagraph 5.h:	Against Applicant
Subparagraph 5.i:	Against Applicant

Conclusion

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

_____
Elizabeth M. Matchinski
Administrative Judge