



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



In the matter of:)
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-----) ISCR Case No. 08-09352
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)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

04/09/2012

Decision

HOWE, Philip S., Administrative Judge:

On April 13, 2008, Applicant submitted his Security Clearance Application (SF 86). On April 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations), G (Alcohol Consumption), H (Drug Involvement), J (Criminal Conduct), and E (Personal Conduct). 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 18, 2011. He answered the SOR in writing on May 23, 2011, and requested a hearing before an administrative judge. DOHA received the request on May 24, 2011. Department Counsel was prepared to proceed on August 19, 2011, and I received the case assignment on August 29, 2011. DOHA issued a Notice of Hearing on October 27, 2011, and I

convened the hearing as scheduled on November 18, 2011. The Government offered Exhibits 1 through 55, which were admitted without objection pursuant to a joint stipulation. Applicant testified and submitted Exhibits A through HH without objection based on a joint stipulation of counsel. DOHA received the transcript of the hearing (Tr.) on November 29, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend SOR ¶ 5.a. by changing the words “paragraph 3.i” to “paragraph 3.j.” Applicant had no objection to the new reference and I granted the motion. (Tr. 63)

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.a to 1.c, and 1.e and 1.f. He denied 1.d of the SOR, with explanations. He admitted the factual allegations in ¶ 2 to ¶ 5 of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 54 years old and married to his current wife since February 13, 2010. He has three children from his first marriage. (Tr. 18; Exhibit 1)

Applicant’s wife testified he is sober, honest, and a caring individual. She has not seen him drink alcohol or relapse into alcoholism. Her son is a recovering alcoholic and she would recognize the signs of alcohol consumption by an alcoholic. Applicant does not exhibit any of these characteristics. She testified Applicant paid his financial debts. Applicant attends Alcoholics Anonymous (AA) several times a month. (Tr. 13-17)

Applicant’s U.S. Army security clearance was revoked in November 1998 after a personal appearance hearing before an administrative judge. The revocation decision was based on Applicant’s history of alcohol dependence, use of illegal drugs, and deliberate falsification of relevant facts pertaining to the former two security concerns (Subparagraph 2.u). Four of the same issues are present in the current hearing case: including alcohol considerations (Guideline G, ¶ 2); use of illegal drugs (Guideline H, ¶ 3); criminal activity (Guideline J, ¶ 4); and failure to disclose information to government investigators regarding the use of marijuana and cocaine while holding a security clearance (Guideline E, ¶ 5). Applicant testified at the March 2, 1998, personal appearance that he had been sober for almost six years, from 1992 to 1998. (Tr. 36; Exhibits 1-11)

Applicant filed Chapter 7 bankruptcy in 2005 (Subparagraph 1.a). He was discharged in January 2006. The bankruptcy was caused by financial difficulties arising from his divorce from his first wife in July 2001, his several periods of unemployment,

and his alcoholism. One unemployment period occurred when the lack of work forced his employer to lay off Applicant in April 2002. Four terminations were caused by Applicant's alcoholism and his consumption of alcohol before work, during lunch time, arriving late for work for an appointment, and spending time away from work seeking treatment for alcohol addiction (Subparagraphs 2.q to 2.t) (October 2000 to April 2001; December 2003 to October 2004; January 2005 to September 2006; and September 2007 to December 2007). (Tr. 30-35; Exhibits 1, 14-16, 22-25, I, U, GG, HH)

Applicant owed a hospital \$150 (Subparagraph 1.b). This debt is paid and resolved. (Tr. 23; Exhibits 14-16, 22-25, FF; Answer)

Applicant owed \$2,928 on a medical account (Subparagraph 1.c). This debt is being paid at the rate of \$100 monthly. Applicant currently owes about \$2,200. This debt is being resolved. (Tr. 24; Exhibits 14-16, 22-25, FF; Answer)

Applicant owed a debt to a bank in the amount of \$19,928 (Subparagraph 1.d). This debt was discharged in the 2006 Chapter 7 bankruptcy. This debt is resolved. (Exhibits 14-16, 22-25, GG; Answer)

Applicant's income from his employer was garnished for child support payments in the amount of \$613.59 bi-monthly starting in January 2008. The state alleged Applicant owed more than \$52,000 in unpaid child support. This action was based on incorrect information and Applicant was able to terminate the garnishment in October 2008. Applicant's former wife submitted a statement that Applicant is current with his child support and no balance is owed. This allegation (Subparagraph 1.e) is based on erroneous information and is resolved. (Tr. 22, 39; Exhibits 14-16, 22-25, Z; Answer and attachments F and G)

Applicant owed a delinquent debt to a Department of Defense agency on a loan for advanced sick leave payments in the amount of \$5,600.41 (Subparagraph 1.f). Applicant contends this debt was paid, but the exhibits show the debt was included in the 2006 Chapter 7 bankruptcy and was discharged. The credit reports exhibits show the debt was discharged in bankruptcy. Therefore, this debt is resolved through the bankruptcy process. (Tr. 20; Exhibits 14-16, 22-25, I, GG)

Applicant does not have any credit cards in his name at the present time. His monthly debts are paid on time. He earns a six-figure income. He started work for his present employer in December 2007. (Tr. 28, 35; Exhibits Y, AA-FF)

Applicant began consuming alcohol at the age of 13 and continued until 2008, except for the 1992 to 1998 period. His drinking was excessive and included binge drinking. Applicant claims he can now resist the compulsion to drink. He attends Alcoholics Anonymous (AA) but does not have a sponsor. Applicant represents he completed the 12-Step AA program. He is a sponsor for another AA member. Applicant admits he is an alcoholic. He has had numerous relapses from sobriety after his

rehabilitation programs. (See the chart he provided as part of Exhibit 13.) (Tr. 21, 36-38; Exhibits 12-16, U, W)

Applicant has received the diagnoses of alcohol and polysubstance abuse and dependence several times from 1985 to 2009 while at treatment facilities. Psychiatrists in 1996 also diagnosed Applicant as having a “narcissistic personality disorder.” Applicant was admitted to a hospital on March 18, 2005, after passing out in public. His BAC was .44%. He was placed on a detoxification protocol. In April 2008 Applicant was admitted to a hospital for alcohol poisoning after consuming two “fifths of alcohol” during a two day period. These events resulted in 14 treatment program admissions in that 24 year time period (Subparagraphs 2.b to 2.f). (Exhibits 2-8, 12-14, 18-21, 30-36, 39, 42-45, 48-55)

Applicant has nine alcohol-related driving arrests between 1976 and 2000:

1. Applicant was arrested for driving while under the influence of alcohol (DWI) in March 1976 and received a fine and probation (Subparagraph 2.g);

2. In November 1982 he was arrested for operating a vehicle under the influence of intoxicating liquor (DUI). Applicant was fined, placed on probation, and his driving privileges revoked (Subparagraph 2.h);

3. He was arrested in December 1984 for impaired driving. Applicant received a fine, probation, and a restricted driver’s license. His blood alcohol content (BAC) was .24% (Subparagraph 2.i);

4. In March 1985 Applicant was again arrested for DUI, found guilty and fined, placed on probation, and given jail time (Subparagraph 2.j);

5. In May 1992 he was arrested for traveling in a motor vehicle with an open container of alcohol and marijuana. No disposition is noted (Subparagraphs 2.k and 3.c);

6. Applicant was fined in May 1992 in another state after being arrested for DWI and possession of marijuana (Subparagraphs 2.l and 3.b);

7. He was arrested on August 6, 1992 for DUI. His BAC was .31% and .30%. Applicant was fined and placed on 18 months’ probation (Subparagraph 2.m);

8. On August 15, 1992, Applicant was again arrested for DUI. He was fined, placed on two years’ probation, received a suspended jail sentence of 60 days, ordered to outpatient therapy, and ordered to take Antabuse to prevent his alcohol consumption (Subparagraph 2.n);

9. Applicant violated probation in about March 1993 by not taking Antabuse medicine and drinking alcohol. He was ordered by the court after his August 15, 1992, arrest not to consume alcohol (Subparagraph 2.o);

10. Applicant was arrested in March 2000 for DUI. He drove his car into a house after driving through a stop sign, hitting the curb, striking a tree and a utility pole support line. His BAC was .27%. He was fined, sentenced to 45 days in jail, and placed on two years' probation (Subparagraph 2.p). (Tr. 20, 36; Exhibits 12, 14, 21, 26-30, 37-41, 46, 47)

Applicant lost four jobs caused by Applicant's alcoholism and his consumption of alcohol before work, during lunch time, arriving late for work for an appointment, and spending time away from work seeking treatment for alcohol addiction (Subparagraphs 2.q to 2.t). The first termination occurred in September 2000, the second in November 2003, the third firing occurred in November 2004, and the fourth job loss in August 2007. (Tr. 30-34; Exhibits 1, 12-21, 48-55)

Applicant began using marijuana in 1973 and used it frequently from 1985 to 1992 while holding a security clearance (Subparagraph 3.a). (Exhibits 1, 3, 8, 14, 26-54; Answer)

Applicant started using cocaine in the late 1970s and continued to use it from 1985 to 1989 while holding a security clearance (Subparagraph 3.d) (Exhibits 1-14, 26-54; Answer)

Applicant self-prescribed and consumed his mother's anxiety medication (Ativan) for two weeks in 2006 (Subparagraph 2.e). Applicant did this after his mother died on February 1, 2006. He used up to three pills daily to help him with his grief. Applicant used his mother's pills for 15 days. (Exhibits 1-19, U; Answer)

Applicant was diagnosed as dependent on and an abuser of marijuana on two occasions. Those evaluations occurred on August 10, 1992 and April 27, 2005 (Subparagraph 3.f). (Exhibits 1-8, 31-36, 42-45, 48-54; Answer)

Applicant was diagnosed as dependent on and an abuser of cocaine by a duly qualified medical professional or licensed clinical social worker on or about April 27, 2002 (Subparagraph 3.g). (Exhibits 1-8, 12-19, 48-54; Answer)

Applicant was diagnosed as addicted to oxycontin by a duly qualified medical professional or licensed clinical social worker on or about April 8, 2002. He purchased oxycontin without a prescription on an Internet website and used it from March to April 2002 (Subparagraphs 3.h and 3.i). Applicant had a prescription for oxycontin in October 2011, after his earlier diagnoses of substance abuse. He also had prescriptions for morphine, lorazepam, and diazepam. These medications are for pain and anti-anxiety relief. (Exhibits 17, 18, 48-54, N-R; Answer)

Applicant used marijuana in September 2006 (Subparagraph 3.j) (Exhibits 1, 12-21; Answer)

Applicant's driving under the influence of alcohol and the presence of marijuana in the vehicle between 1976 to 2000, and his possession and use of marijuana and cocaine from 1973 to 2006, while holding a government security clearance (Subparagraphs 2.g to 2.p, 3.a to 3.i), are actions in violation of state and federal criminal laws (Paragraph 4). (Exhibits 1-21, 26-55; Answer)

Applicant failed to admit to government investigators in July 2008 that he used marijuana as recently as September 2006 (Subparagraph 5.a). Applicant's U.S. Army security clearance was revoked in 1997 for personal conduct, criminal conduct, personality disorders including mental and emotional issues, and alcohol consumption. (Subparagraphs 2.u and 5.b). He used marijuana starting in 1973 and many times from 1985 to 1992 while holding a secret clearance (Subparagraphs 3.a, 3.d, and 5.b). Applicant also used cocaine from the late 1970s and during 1985 to 1989 while holding a security clearance (Subparagraph 3.d and 5.b). (Exhibits 1-14, 26-54; Answer)

Applicant submitted his 2009-2011 performance evaluations from his current employer where he works as a systems engineer. They show his ratings were that he frequently exceeds expectations resulting in exemplary performance, or far exceeds expectations resulting in exceptional performance. (Exhibits F-H)

Applicant submitted 12 letters of recommendation. These persons comment favorably on Applicant's work ethic and productivity. They report his judgment is clear and sound. These writers consider Applicant honest and a man of integrity. One supervisor reports Applicant has performed in an outstanding manner in the tasks assigned to him. Two reference letters were written by persons who knew Applicant as a youth in their neighborhoods who knew and associated their children while growing up there. Applicant's present wife submitted a character letter. Applicant also submitted two biographical letters detailing his personal history to the current time. (Exhibits A-E, J-M, T, U)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 (AG ¶ 2(a)). 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant owes more than \$29,019.59 in delinquent debt that accumulated from 2001 to the present time and remained unpaid as of the date of the SOR. Applicant had five delinquent debts listed in the SOR. Applicant also filed a Chapter 7 bankruptcy in 2005 and was discharged in 2006.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties occurred several years ago when he was undergoing a divorce in 2001 and subsequently experienced five periods of unemployment. Four of these periods were caused by Applicant's alcohol addiction. He has not consumed alcohol since 2008, so that factor, which in the past resulted in several episodes of unemployment, is diminished at present. The financial behavior was several years ago and occurred under a combination of factors not likely to occur again. Applicant acted responsibly under the circumstances and took appropriate and legal action to resolve his delinquent debts, including the bankruptcy filing. AG ¶ 20 (a) and (b) apply.

Applicant paid his delinquent debts. The child support was an erroneous collection effort by his home state. The matter was resolved. The bankruptcy occurred five years ago and is not a factor in Applicant's current financial status. He is paying two accounts on an installment payment plan. The \$19,928 debt owed to a bank was discharged in bankruptcy in 2006, as was the sick leave loan from a government agency. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts, albeit through bankruptcy for his debts incurred before 2006.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining 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 describes seven conditions that could raise a security concern and may be disqualifying:

(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;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(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;

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

(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;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

All the disqualifying conditions apply. Applicant has nine alcohol-related driving arrests between 1976 and 2000, including an accident in which he drove into a house after hitting a tree when he failed to halt at a stop sign. His BAC in these incidents ranged from .27% to .44%. Applicant was terminated four times from employment because he drank alcohol at work or before coming to work. He failed to comply with a court order to use Anabuse and continued to consume alcohol. His drinking was excessive and habitual. He attended several rehabilitation programs but resumed

drinking after or during his attendance. He was diagnosed as alcohol dependent by the professional members of the rehabilitation programs, including physicians and licensed clinical social workers. Applicant admits he is an alcoholic. His longest period of self-described sobriety was from 1992 to 1998 when he had his last security clearance appeal hearing. Subsequently, he relapsed. Now he claims to be abstinent since 2008. Applicant's multitudinous relapses from alcohol abstinence since 1976 make his current claim unpersuasive.

AG ¶ 23 provides four conditions that could mitigate security concerns under this guideline:

(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.

AG ¶ 23 (b) has partial application because Applicant admits his alcoholism. He participates in AA but does not have a sponsor. He is a sponsor for another member according to the exhibit submitted at the hearing. Applicant denies he has the compulsion to drink alcohol. However, the last evaluation or rehabilitation program documentation Applicant submitted was in 2009, the last of his 14 participations in such programs. His asserted pattern of abstinence is not established by any objective professional evaluation or report.

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to illegal drugs:

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.

(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;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes eight conditions that could raise a security concern and may be disqualifying. Five conditions apply in this case:

(a) any drug abuse (see above definition);

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

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

(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; and

(g) any illegal drug use after being granted a security clearance.

Applicant used marijuana from 1973 to 1992, and as late as 2006. He used cocaine in the late 1970's and from 1985 to 1989. Applicant consumed his mother's anti-anxiety medication Ativan for two weeks in 2006. AG ¶ 25 (a) applies.

Applicant used marijuana and cocaine while holding a security clearance from 1985 to 1989. AG ¶ 25 (g) applies.

Applicant possessed marijuana and cocaine, which are illegal substances. He purchased the anti-anxiety drug oxycontin from an internet website from March to April 2002 without a valid prescription. AG ¶ 25 (c) applies.

Applicant was diagnosed as marijuana dependent/abuse on August 10, 1992, and April 27, 2005, by a duly qualified medical professional or a licensed clinical social worker. He was also diagnosed as cocaine dependent/abuse on April 27, 2005. Applicant was diagnosed as oxycontin dependent by a duly qualified medical professional on April 8, 2002. AG ¶ 25 (d) and (e) apply.

AG ¶ 26 provides four conditions that could mitigate security concerns:

(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;

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;

(3) an appropriate period of abstinence; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(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.

None of these mitigating conditions apply. Applicant history of illegal drug use extends over two decades. The use of illegal drugs cast serious doubt on Applicant's judgment, trustworthiness, and current reliability, regardless of the number of character statements submitted. AG ¶ 26 (a) does not apply.

Applicant did not discuss his intent not to use illegal drugs in the future or that he was currently abstinent because of any interior motivation or exterior force. His illegal use of prescription anti-anxiety medications was not after a medically diagnosed illness. AG ¶ 26 (b) and (c) do not apply.

Applicant's repeated use of illegal drugs shows an inability to abstain from them. He did not submit a current evaluation by a duly licensed medical professional or a licensed clinical social worker from a recognized rehabilitation program, confirming his assertions that he is sober and abstinent, and has a good prognosis to remain that way. His latest information is five years or more old. AG ¶ 26 (d) does not apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

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.

AG ¶ 31 describes five conditions that could raise a security concern and may be disqualifying. Three conditions apply in this case:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's nine alcohol and marijuana-related driving arrests are multiple crimes. His possession of marijuana and cocaine are crimes under state and federal laws. AG ¶ 31 (a) and (c) apply.

Applicant violated his probation in March 1993 by not taking the Antabuse ordered by the court after his driving arrest. He also violated the same court order by consuming alcohol after being ordered not to do so. AG ¶ 31 (e) applies.

AG ¶ 32 provides four conditions that could mitigate security concerns. One condition may apply:

- (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;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and

(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.

Insufficient time has passed since the commission of these offenses, so AG ¶ 32 (a) does not apply except very minimally. His last arrest was in 2006. The time since then is not sufficient because of his long criminal history prior to that arrest.

There is no evidence Applicant was coerced into committing any of the alleged actions. Therefore, AG ¶ 32 (b) does not apply.

Applicant admitted his guilt on all the crimes set forth in the SOR. AG ¶ 32 (c) does not apply.

Applicant has a good employment record, based on his evaluations and supervisor's statements. He has not committed any other crimes since 2006. AG ¶ (d) applies partially on these two factors.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes six conditions that could raise a security concern and may be disqualifying. Three conditions may apply:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant failed to admit to government investigators that he used marijuana as late as September 2006 during the course of their background interview in July 2008. AG ¶ 16 (b) applies.

Applicant has a three decade history of alcohol, drug, and criminal misconduct. Each series of incidents under these headings is sufficient to disqualify Applicant because they demonstrate his questionable judgment, lack of trustworthiness, unreliability, and unwillingness to comply with statutes, rules, regulations, and court orders. All actions bring into question his commitment to safeguarding classified information. AG ¶ 16 (c) applies.

Applicant's long history of misconduct makes him vulnerable to exploitation, duress, coercion, or manipulation that affects his personal, professional, or community standing. Applicant was fired four times from responsible jobs for his alcohol use during or before working hours. He has numerous driving violations caused by alcohol consumption. Applicant obtained and used illegal drugs and anti-anxiety medications. He used illegal drugs while holding a security clearance in the 1980s. His Army clearance was revoked in 1997 based on several of the same security concerns as appear in the current SOR. At the time of his 1997 hearing he also claimed, as he does now, a multi-year term of alcohol abstinence, after which he resumed his drinking pattern and was arrested in 2000 for DUI. These are serious violations of community and professional standards. AG ¶ 16 (e) applies.

AG ¶ 17 provides seven conditions that could mitigate security concerns. None of the conditions apply:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not submit any evidence to support the application of any of the mitigating conditions. Applicant did not seek immediately to correct any incorrect information given government investigators. He did not take positive steps to reduce his vulnerability to coercion and duress. The omission of drug information, in an interview with a government investigator is a serious offense. the use of illegal drugs is a serious law violation. The information is well-substantiated and verified by Applicant's admissions.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant was a mature adult and professional when he committed the various acts alleged in the SOR. He has a serious and recurring problem with alcohol and drugs. He exercised extremely poor judgment using illegal drugs while holding his previous security clearance. He has nine alcohol-related driving arrests. He was fired four times from jobs because of his alcohol use. Applicant illegally obtained a medication using the Internet. He has been diagnosed as alcohol and drug dependent several times in the past 20 years, but continued to drink and use illegal drugs. There is no rehabilitation or changed behavior pattern independently verified by current professional evaluations. Applicant may be a good employee now, but that does not qualify him for a security clearance and access to classified documents. His past history of substance abuse and relapses cause serious doubt about his present declaration of abstinence and lack of compulsion to drink alcohol to excess, or use illegal substances.

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his Financial Considerations. He did not mitigate the security concerns under Alcohol Consumption, Drug Involvement, Criminal Conduct, and Personal Conduct. I conclude the “whole-person concept” against Applicant.

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 F:	FOR APPLICANT
Subparagraphs 1.a to 1.f:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a to 2.u:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraphs 3.a to 3.j:	Against Applicant
Paragraph 4, Guideline J:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant
Paragraph 5, Guideline E:	AGAINST APPLICANT
Subparagraphs 5.a and 5.b:	Against Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge