



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



In the matter of:)	
)	
)	ISCR Case No. 09-06750
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

May 31, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has a history of excessive drinking, at times daily, to cope with anxiety and with work and marital stress. He received voluntary alcohol counseling in 2005 and again in 2009, but despite a diagnosis of alcohol dependence and attendance at AA, he continued to abuse alcohol on occasion until July 2010. He began counseling in January 2011 with a psychotherapist well experienced in the treatment of substance abuse, but it is too soon to conclude that his alcohol abuse is safely behind him. Personal conduct concerns raised by Applicant’s use of marijuana in May 2006, in knowing disregard of the Government’s and his employer’s policies prohibiting illegal drug use, are mitigated by the passage of time with no recurrence. Clearance denied.

Statement of the Case

On August 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct), which provided the basis for its preliminary decision to revoke his security clearance. DOHA took action 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 responded to the SOR allegations on August 18, 2010, and he requested a hearing. The case was assigned to me on November 3, 2010, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On November 12, 2010, I scheduled a hearing for December 15, 2010.

I convened the hearing as scheduled. Twelve Government exhibits (Ex. 1-12) and two Applicant exhibits (Ex. A-B) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on December 23, 2010. I held the record open for post-hearing submissions from Applicant. Ten additional Applicant exhibits (Ex. C-L) were admitted after the hearing.

Procedural and Evidentiary Rulings

Post-Hearing Exhibits

At the hearing, I held the record open until February 9, 2011, for Applicant to obtain and to submit a report of an alcohol assessment. Applicant submitted a report of counseling sessions with a certified forensic counselor (Ex. D) and five character reference letters (Ex. E-I). Department Counsel did not object to their admission, and the exhibits were admitted. However, on expressed concerns from the Government about the qualifications of the substance abuse counselor, I reopened the record on February 17, 2011, to give Applicant an opportunity to address those concerns.

On February 23, 2011, Applicant submitted information from the counselor's website (Ex. J), the counselor's curriculum vitae (Ex. K), and a pamphlet from Applicant's Employee Assistance Program (EAP) at work (Ex. L). The additional exhibits were entered into the record without objection.

Summary of SOR Allegations

The SOR alleged under Guideline G, Alcohol Consumption, that Applicant consumed alcohol almost daily and at times to intoxication from about 1965 to at least January 2010 (SOR 1.a); and that he continued to drink alcohol (SOR 1.c, 1.d, 1.f) after being diagnosed with alcohol abuse in May 2005 (SOR 1.b), completing an alcohol treatment program from April 2009 to September 2009 (SOR 1.d), and being diagnosed as alcohol dependent in January 2010 (SOR 1.e). Under Guideline E, Personal Conduct, Applicant was alleged to have tested positive in a random drug screen while holding a security clearance around May 2006 (SOR 2.a).

Findings of Fact

In his Answer, Applicant denied the Guideline G allegations, but admitted the positive drug test alleged under Guideline E. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 59-year-old community college graduate with an associate's degree in electronics technology awarded in June 1988. Since May 2009, Applicant has worked as an electrical engineering assistant for a defense contractor. Applicant held a secret-level security clearance with a previous employer from May 2002 to November 2006. (Ex. 1, 2, 10.)

Applicant started drinking alcohol and smoking marijuana as a teenager. Marijuana was his drug of choice during his youth, and he smoked it almost daily until he was in his early 30s. From the early 1970s to the mid-1980s, Applicant bought small quantities of marijuana for \$40 each. He sold about three-quarters of the amount purchased to his friends to cover the cost of his own use. (Ex. 2, 3.)

Starting in his mid-30s, Applicant began drinking a half pint to one pint of liquor to intoxication almost daily. Applicant continued to consume alcohol almost daily following his marriage in July 1987 and after the birth of his only child in February 1993, which caused problems in his marriage. He had stopped smoking marijuana, although when "jamming" with old friends, he was still in an environment conducive to illegal drug use. (Ex. 2, 3.)

In December 2001 and April 2002, Applicant took pre-employment drug screens for an engineering specialist position with a defense contractor.¹ He had worked for the company at another facility from July 1995 to October 1998. (Ex. 2.) The drug screens were negative for all substances tested, including marijuana. (Ex. 8.) Applicant was hired, and following a background investigation initiated by a security clearance application (SF 86) dated December 15, 2001 (Ex. 2), Applicant was granted a secret-level security clearance in May 2002. (Ex. 10.)

On May 20, 2005, Applicant underwent a psychiatric evaluation at the referral of his primary physician after he complained of anxiety. Frustrated with an inability to complete his job tasks because of coworkers' nonperformance, Applicant had been buying four to six small bottles of alcohol (one-ounce "nips") to self-medicate at night after dinner. (Tr. 91.) He was diagnosed by a licensed mental health counselor (LCMHC) with anxiety disorder, not otherwise specified, and with alcohol abuse. Applicant had eight counseling sessions with the LCMHC between June 2005 and May 2006. As of early June 2005, Applicant had stopped buying nips on his way home from work, but he had purchased a six-pack of beer over the previous weekend. In August 2005, Applicant reported to the LCMHC that he had not been drinking alcohol. As of January 2006, there had been no change in primary

¹ Before the December 10, 2001, drug test and each subsequent substance abuse screening, Applicant signed a release with the understanding that the results could affect his eligibility for future employment or continued employment with the defense contractor. (Ex. 8.)

diagnoses. While the primary focus of their sessions was anxiety and angry outbursts, the negative effects of alcohol were also discussed. In a session held in early May 2006, Applicant admitted to the LCMHC that he had recently used marijuana and tested positive during a random drug screen at work. (Ex. 11.)

While “jamming” with an old band friend at a party around early May 2006, Applicant had smoked marijuana passed to him. (Ex. 4.) On the afternoon of May 2, 2006, Applicant took a random drug screen for his defense contractor employment, which was negative for all substances tested, but the specimen had been diluted. The next day, he was sent for another random drug screen, which was positive for marijuana. He was suspended from work for three days, and he was required to undergo counseling and follow-up drug screens. (Ex. 8, 10, 12.) He took six follow-up drug screens on random dates between June 2006 and October 2006, which were all negative for illegal substances. (Ex. 8.) Applicant understands that it was “stupid” to have smoked the marijuana because it could have cost him his job. (Tr. 81.)

On May 9, 2006, Applicant contacted an EAP counselor at the direction of human resource personnel at work. Applicant had been self-medicating with alcohol for stress over the previous year, and he was currently consuming one or two drinks twice or three times per week. He indicated that his use of marijuana was a “one time” event with an old friend when both became nostalgic about the times they played together in a rock band and smoked marijuana together. Applicant was referred for a two-session assessment, at a minimum, in light of his positive drug screen. Screening tests indicated a low probability of Applicant having a substance dependence disorder. The assessment was completed on May 18, 2006, and he was referred for brief therapy. (Ex. A.) Feeling anxious, Applicant sought a behavioral health evaluation on May 19, 2006. Mental health treatment was suspended pending required completion of his EAP sessions. (Ex. 9.) Applicant was considered candid and compliant during five individual counseling sessions held between May 31, 2006 and September 5, 2006. At the completion of the seven EAP sessions authorized, Applicant had unresolved work stress issues, but he was not referred for any further treatment. In a follow-up call to the EAP on September 13, 2006, Applicant indicated that he never had a drug problem, although he planned to continue seeing the counselor because he liked him. Applicant expressed frustrations with shift work on the job. (Ex. A.)

In November 2006, Applicant began working for a new employer. (Ex. 1.) He agreed to abide by his new employer’s policy concerning a drug-free workplace (Ex. 5), and there is no evidence that he violated that policy. At his annual review in December 2007, he was given a 3.23% increase in pay. One year later, he was laid off because of his poor performance.² (Ex. 5.)

² Applicant indicates that he was terminated without good cause in December 2008, and that he was subsequently denied another job opportunity due to conflicting reference information from his previous employer. See Ex. 4; B. This job termination is relevant to the extent that it apparently led Applicant to seek counseling in March 2009. See Ex. 6. The Government did not allege the termination as a cause for security concern.

In late December 2008, Applicant attended a few Alcoholics Anonymous (AA) meetings. In response to his spouse's concerns about his drinking and his own anger about his recent employment termination, Applicant voluntarily sought counseling. At intake in March 2009, Applicant reported a long history of drinking at the level of dependence, and stated that he did not have much to keep him from drinking at present. The director of substance abuse services, a licensed clinical social worker (LICSW), diagnosed Applicant with alcohol dependence.³ He recommended that Applicant attend weekly counseling and three or more AA meetings weekly, and that he also obtain an AA sponsor. Applicant attended an intensive outpatient alcohol counseling program at the facility four days a week plus two AA meetings per week until April 18, 2009. At discharge, the LICSW indicated that Applicant was able to make a commitment to sobriety. Aftercare recommendations included continued AA and follow-up with an individual therapist. (Ex. 6.) Applicant attended AA twice a week, and until September 2009, also weekly group sessions led by a former alcoholic. He drank up to five one-ounce nips of Southern Comfort on three occasions between March 2009 and September 2009, when he chose to discontinue attending the group sessions because he felt he was not getting any positive reinforcement for his efforts to quit drinking. (Ex. 4.)

In May 2009, after passing a drug screen (Tr. 82), Applicant began his current employment. On June 19, 2009, he executed an Electronic Questionnaire for Investigations Processing (e-QIP). He disclosed his use of marijuana on one occasion in May 2006. He responded affirmatively to question 24.a, "In the last 7 years, has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel?", and added "Frequent use caused family problems." He disclosed that he had recently started treatment with the LICSW for his alcohol use. (Ex. 1.)

On July 22, 2009, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He reported that his alcohol consumption had caused him family-related problems for the past 20 plus years. He related that he was continuing to attend two Alcoholics Anonymous (AA) meetings per week. Applicant denied any marijuana use since he tested positive for the random drug screen two or three years ago because he realized it could jeopardize his employment. (Ex. 3, 4.)

³ The SOR alleged January 2010 as the date of the diagnosis, apparently based on the date (January 10, 2010) of the LICSW's signature on the intake evaluation. However, the LICSW indicated in a letter of January 11, 2010, that Applicant had attended the intensive outpatient program and was able to make a commitment to sobriety. Clearly, Applicant did not have his evaluation one day and complete the program the next day. In all likelihood, the LICSW printed out a copy of an earlier intake evaluation for the investigator and then signed it in January 2010. Applicant indicated on his June 2009 e-QIP (Ex. 1) that he was in voluntary treatment with the LICSW starting in April 2009. In his affidavit of January 2010 (Ex. 4), he indicated that the treatment began on March 3, 2009. Apparently, the diagnosis was rendered around March 2009, not January 2010 as alleged in SOR 1.e. In accord, Applicant testified that January 2010 was when the evaluation was received by the LICSW and not when he went to counseling. (Tr. 59.) The evidence does not establish the Government's continued assertion (see Tr. 65.) of a diagnosis of alcohol dependence in 2010.

On January 7, 2010, Applicant completed an affidavit for OPM. He acknowledged that he had continued to consume alcohol after September 2009, up to four ounces of Southern Comfort about every third night. Because he and his spouse argued over his drinking, he concealed this drinking from her. He indicated that his goal was to quit drinking entirely. While he did not currently have a sponsor in AA and was not sure whether he wanted to be involved in AA, he was still going to at least two AA meetings a week because he felt some benefit from them, and they occupied time that he might otherwise spend drinking. Applicant volunteered that he had purchased and sold marijuana to friends until the mid-1980s. He denied any use of marijuana thereafter, except for the one-time use while “jamming” with his old friend, which led to the positive urinalysis. He denied any intent to use any illegal drug, including marijuana, in the future. (Ex. 4.)

Despite his ongoing attendance at regular AA meetings (no step meetings) until June 2010 (Tr. 98-99, 104), Applicant continued to abuse up to five “nips” of alcohol on occasion, largely to self-medicate to deal with frustration and anxiety. (Tr. 102, 108.) He had a prescription for Paxil that he took when he felt like it, although it was prescribed for daily use. (Tr. 109-11.)

After drinking at home and arguing with his spouse on July 9, 2010, Applicant was charged with driving while intoxicated (DWI) and with a restraining order being filed against him.⁴ (Ex. D.) The charge was apparently dismissed, and the restraining order was vacated, but his spouse filed for divorce. (Ex. D; Tr. 102, 115.) It motivated Applicant to stop drinking (Tr. 101.), and he was still maintaining abstinence as of January 2011. (Ex. B.) He had not returned to AA before his hearing in mid-December 2010 because he did not see a need for it, although at the hearing he perceived a need to resume AA to show the Department of Defense that he was capable of taking care of himself. (Tr. 100) He did not think that he had a problem with alcohol, although the possibility of a relapse was something he thought about daily. (Tr. 103.) The pending divorce had lessened the stress that led him to drink in the past. (Tr. 115.)

On December 28, 2010, after the hearing on his security clearance eligibility, Applicant sought an evaluation from a psychotherapist certified in substance abuse counseling and with 36 years of experience in the field. (Ex. J, K.) Starting on January 7, 2011, Applicant began individual counseling with this psychotherapist on a biweekly basis to reinforce the goal of continued sobriety and to cope with a difficult divorce. Applicant also agreed to attend AA. As of late January 2011, the counselor opined that Applicant was motivated to remain abstinent from alcohol. He assessed Applicant’s prognosis as “very good anticipating continued efforts towards alcohol recovery, relapse prevention, and compliance with counseling and AA.” (Ex. D.)

⁴ Applicant testified at his hearing that his last drink was on July 9, 2010. He had problems with his wife and “the issues that came to be that it was the day that [he] stopped drinking.” Applicant recalled drinking Southern Comfort at home that day. He did not volunteer that he had been arrested for drunk driving. (Tr. 102.) The psychotherapist referenced Applicant’s arrest for drunk driving in his assessment of late January 2011. (Ex. D.)

Applicant met his employer's expectations for his work performance in 2009 in that he achieved all job objectives and met requirements in various job competencies, such as attendance, compliance with ethics, customer satisfaction, and job knowledge. (Ex. B.) Applicant's supervisor found Applicant to possess an excellent work ethic and to produce work of "top notch" quality. He considers Applicant to be a valuable member of their team. (Ex. C, G.) A mechanical designer familiar with Applicant's work for the past year also found him to be "dependable, reliable, and hard-working." (Ex. E.) An electrical engineer described Applicant as having "a very even temperament." (Ex. H.) A former coworker, who continues to play guitar with Applicant and is familiar with his marital situation, attests to Applicant being "more focused" now that he is on his own. (Ex. F.)

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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to 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

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.” Applicant began drinking alcohol to intoxication almost daily in the mid-1980s. By May 2005, he had turned to alcohol to cope with work and marital anxiety and stress. With the help of voluntary counseling for anxiety in 2005, and employer-mandated EAP counseling in 2006 following the positive drug test, his drinking moderated somewhat. Yet by 2009, he had developed an alcohol dependency problem. Several Guideline G disqualifying conditions are implicated.

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,” applies because of an incident that involved Applicant’s spouse in July 2010. Applicant provided little detail at his hearing other than he had consumed alcohol. A report from Applicant’s psychotherapist, submitted post-hearing, revealed that Applicant had been arrested for DWI and that a restraining order had been filed against him. (Ex. D.) Although the drunken driving charge was apparently dismissed and the domestic violence restraining order was vacated without a finding, the alcohol-related incident was the final straw in a marriage marked by discord because of his drinking.

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,” is established. For years, Applicant regularly drank to intoxication after work and on the weekends. When he sought outpatient treatment in March 2009, Applicant revealed “a long-standing history of drinking at the level of dependence.” (Ex. 6.)

The evidence warrants consideration of AG ¶ 22(d), “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence,” even in the absence of a specific reference to the diagnostic criteria. The psychotherapist, with whom Applicant began counseling in January 2011, is well-qualified to render a diagnosis of alcohol abuse or alcohol dependence. In his assessment letter of January 27, 2011 (Ex. D), he indicated that Applicant sought counseling “at a time of domestic turmoil and alcohol abuse.” The psychotherapist also stated that the focus of their sessions was “to reinforce the goals of continued sobriety,” and that Applicant was motivated to remain abstinent from alcohol.” Even as to Applicant’s

prognosis, the psychotherapist's comments indicate Applicant has an alcohol problem ("His prognoses [sic] is very good anticipating continued efforts towards alcohol recovery. . .").

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," is firmly established. The LCMHC, who counseled Applicant primarily for anxiety from May 2005 to May 2006, at the referral of Applicant's physician, diagnosed Applicant with an unspecified anxiety disorder and with alcohol abuse. (Ex. 11.) More recently, Applicant was diagnosed with alcohol dependence by the LICSW, who serves as the director of substance abuse services for the intensive outpatient program Applicant completed in 2009. (Ex. 6.)

Applicant drank Southern Comfort liquor on three occasions while in that intensive outpatient program or its aftercare component, which included AA and his participation in group counseling led by a former alcoholic. After he stopped going to those group sessions in September 2009, he continued his twice-weekly attendance at regular AA meetings. Yet, he also continued to drink up to four or five ounces of Southern Comfort about every third night until July 2010, when he was arrested for drunk driving. This sustained relapse triggers security concerns under AG ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program."

None of the mitigating conditions under Guideline G apply. His abuse of alcohol to as recently as July 2010 removes his case from any serious consideration of 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." Apart from the EAP counseling required by Applicant's then employer after the May 2006 positive drug test, his alcohol counseling has been voluntary, albeit prompted in 2009 by his spouse's concerns and in 2011 by the need to demonstrate to the Department of Defense that he is capable of taking care of himself. These actions to overcome his drinking problem are viewed in his favor and partially implicate AG ¶ 23(b), "the individual acknowledges his or her alcoholism or issues of 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)." However, given his years of abusive alcohol consumption, his present abstinence since July 2010 is not long enough to guarantee against relapse. In addition, while Applicant testified to his intent to abstain from alcohol, he did not feel that he had a problem with alcohol as of mid-December 2010. (Tr. 103.)

As of late January 2011, Applicant was a "current employee who is participating in a counseling or treatment program," but his abusive drinking after completing the intensive outpatient program precludes me from applying AG ¶ 23(c) (stating, "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"). So too, Applicant fails to fully satisfy AG ¶ 23(d), which provides as follows:

(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.

Applicant's surreptitious drinking at home from September 2009 through July 9, 2010, which he did not always successfully conceal from his spouse, makes it difficult to conclude that his outpatient counseling was a success, even though he completed the program's requirements. His present abstinence starting July 10, 2010, is viewed favorably, but even so, a longer period is required before it shows "a clear and established pattern." Although Applicant attended AA at least twice a week from around March 2009 to June 2010, he was not committed to the program. He continued to drink alcohol and was not involved in any step work. He also did not obtain a sponsor in AA. As of December 2010, he had no reason for ceasing his AA attendance other than he was taking a break. Having abused alcohol in the past to self-medicate symptoms of anxiety, Applicant was risking relapse by not taking his Paxil on a regular basis, and he had no support network in place to aid him in maintaining sobriety. After the hearing, Applicant presented a "very good" prognosis from a well-qualified psychotherapist with many years of experience in treating substance abuse. Yet, that prognosis is conditioned on Applicant's "continued efforts towards alcohol recovery, relapse prevention, and compliance with counseling and AA." There is no evidence about the extent of Applicant's participation in AA, if any. He needs to demonstrate through his actions a sustained commitment to his recovery before I can conclude that the alcohol consumption concerns are fully mitigated.

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.

Personal conduct security concerns are raised by Applicant's use of marijuana in May 2006, while possessing a security clearance and knowing that it was against his employer's and the DoD's policies against such drug use. In addition to raising concerns about the quality of his judgment generally under AG ¶ 15, AG ¶ 16(f), "violation of a written or recorded commitment made by the individual to the employer as a condition of employment," is implicated. On May 2, 2006, Applicant signed a substance abuse screening release affirming to his understanding that a positive result for illegal drugs could

affect his eligibility for future employment or continued employment with the defense contractor. The result of that test was negative, but the specimen had been diluted. Applicant was sent for another test the following day, and he executed a similar release. He tested positive for marijuana that he had smoked at a party. (Ex. 8.)

Applicant was no stranger to marijuana. He used it almost daily, until he was in his early 30s. He even sold some of the marijuana he purchased to friends. The Government chose not to allege his marijuana use under Guideline H, drug involvement,⁵ presumably because Applicant had abstained for some 20 years before he smoked the marijuana in 2006, and it was not likely sufficient by itself for an adverse determination under Guideline H. That said, AG ¶ 16(d) cannot strictly apply because marijuana use is explicitly covered under AG ¶ 24(a) and ¶ 25(a). AG ¶ 16(d) states as follows:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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.

Under AG ¶ 24(a), drugs are defined as “mood and behavior altering substances,” and include 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). AG ¶ 25(a) is implicated by “any drug abuse.”

Mitigating conditions AG ¶ 17(c) and ¶ 17(d) apply to alleviate the judgment concerns raised by Applicant’s marijuana use in 2006. Applicant’s use of marijuana cannot reasonably be considered a minor offense, but it occurred four years ago and only once in the last 25 years. In terms of conduct that could reasonably give rise to security concerns as of August 2010, “so much time has passed” and it was “so infrequent” to satisfy those components of 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.” This is so in light of his counseling for that abuse with the EAP clinician, his expressed intent not to use any illegal drugs in the future, and the absence of recurrence as confirmed through October 2006 by a series of negative drug screens. 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,” applies.

⁵ Under Guideline H, 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.”

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a long history of alcohol abuse that culminated in his arrest for drunk driving in July 2010. While Applicant has been abstinent from alcohol since then, he has been taking his Paxil medication only on occasion, even though he apparently had a prescription for daily use ("I don't take it on a daily basis because a lot of times I don't feel that I need or I just forget, but I don't take it regularly."). The risk of relapse to self-medicate cannot be ruled out in light of his history of abusing alcohol to cope with anxiety and marital and work-related stress. Furthermore, it remains to be seen whether Applicant will comply with the treatment regimen he began in January 2011, and whether he will gain the insight and tools needed for sustained sobriety. He and his spouse were in the process of divorcing, and in the opinion of his psychotherapist, Applicant needed support to help with the transition to his new family situation. Applicant has not allowed alcohol to negatively affect his work, but based on the totality of the facts and circumstances, I cannot conclude that it is clearly consistent with the national interest to grant or restore security clearance eligibility to Applicant 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 G:	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
Subparagraph 1.f:	Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge