



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



In the matter of:)
)
) ISCR Case No. 11-03520
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2012

Decision

MASON, Paul J., Administrative Judge:

Applicant’s criminal conduct has been mitigated by the passage of time combined with his successful completion of a 24-session domestic violence treatment program in November 2009. He has also mitigated the drug involvement guideline based on abstinence since July 2008 and his statement of intention not to use drugs in the future. By contrast, Applicant has not mitigated the alcohol consumption guideline because of his continuing alcohol use despite an evaluation in November 2011 of alcohol dependence, in full remission, by a licensed clinical social worker. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 13, 2010. He was interviewed by an investigator from the Office of Personnel Management (OPM) on June 11, 2010. In his interrogatory answers submitted to the Government on August 12, 2011, after noting that several debts were not his responsibility, Applicant agreed with the investigator’s summary of his June 2011

interview summary, and acknowledged the interview summary could be used in a security clearance hearing to determine his security suitability. DOHA issued an undated Statement of Reasons (SOR) detailing security concerns under criminal conduct (Guideline J), alcohol consumption (Guideline G), and drug involvement (Guideline H). 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), implemented by the Department of Defense on September 1, 2006.

Applicant furnished his notarized answer to the SOR on January 3, 2012. DOHA issued a notice of hearing on May 9, 2012, for a hearing on May 31, 2012. The hearing was held as scheduled. At the hearing, 17 exhibits (GE 1 through 17) were admitted in evidence in support of the Government's case. Applicant testified and offered five exhibits (AE A through AE E). All exhibits were admitted in evidence without objection. The changes made to GE 4 and GE 5 are discussed below in Rulings on Procedure. The transcript will be cited as (Tr.) followed by the page number. DOHA received the transcript and the record closed on June 7, 2012.

Rulings on Procedure

On February 9, 2012, the Government signed a motion to amend the SOR by adding ¶ 1.g. to the criminal conduct allegations of the first paragraph of the SOR. The Government mailed this amendment to Applicant. The amendment alleges:

On or about September 1, 2006, you were arrested and charged with assault and battery and telephone threats. The charges were amended to destruction of private property. You pled no contest and received a six-month deferred finding and were required to make restitution to the victim.

On February 17, 2012, Applicant admitted the amendment with his initials and signature, and returned the amendment by mail to the Government. He reiterated his admission to SOR ¶ 1.g at the hearing on May 31, 2012. (Tr. 11) The motion to amend has been identified as Hearing Exhibit 1 (HE 1), and admitted into the record. The motion was granted. (Tr. 11-12)

Finally, the last two collection account entries under question 1, page 1 of GE 4, have been stricken from the exhibit because the accounts are not Applicant's responsibility. Guideline F (financial considerations) is not alleged in the SOR. Therefore, the contents of GE 4 (interrogatory answers regarding delinquent accounts), GE 5 (credit report), and financial information in GE 6 have not been considered for substantive purposes or under the whole-person concept. The foregoing changes to the SOR and to GE 4, 5, and 6, have been made pursuant to ¶ E.3.1.17. of DoD Directive 5220.6.

Findings of Fact

Applicant is 25 years old. He has been married since December 2008. He has five children, three from his current wife. In late 2011, he adopted his wife's child from another relationship. (Tr. 65) He also has joint custody of a stepchild from a previous relationship. (Tr. 61) He has been employed as a technical assistant by a defense contractor since April 2010. In December 2012, Applicant is expecting to receive a bachelor of science degree in information technology. (AE C)

Applicant's Criminal History

Applicant's criminal history will be discussed in chronological order beginning with the most recent offense to the oldest offense:

SOR ¶ 1.e. In May 2008, Applicant was arrested for driving on a revoked license. In August 2008, the charge was dropped because he was never notified by the state that his license had been suspended or revoked. (Tr. 52; GE 2 at 1)

SOR ¶ 1.b. On January 22, 2008, Applicant was arrested and charged with assault and battery, and destruction of property. The person who filed the charges was Applicant's former girlfriend who was pregnant when the offense occurred. (GE 14 at 23) The assault charge was temporarily elevated to a felony level offense (malicious wounding) for unknown reasons. (GE 8 at 1-9) Before the August 2008 plea and sentencing, the prosecutor submitted a synopsis of what the evidence would show had the case proceeded to trial. The synopsis indicates that Applicant, the victim's former boyfriend and father of her unborn child, assaulted her, fractured her arm, and damaged a door of the victim's residence by kicking it. (GE 8 at 4) Though Applicant signed the synopsis, he denied he fractured the victim's arm. Rather, he was trying to restrain her while retrieving his personal belongings. He claimed that his mother could testify about whether her arm was fractured. (Tr. 59-60) No additional evidence was presented concerning the extent of the victim's injuries. When asked whether he had been drinking or using drugs before the incident, Applicant initially indicated that he had not been drinking. Then, he testified that he was not drunk. (Tr. 50)

On August 28, 2008, Applicant pled guilty to assault and battery of a household or family member (former girlfriend) and destruction of private property, both misdemeanors. (GE 8 at 6) He was sentenced to two years supervised probation, including mandatory compliance with treatment recommendations and a domestic violence assessment. He successfully completed three months of outpatient substance and alcohol dependence treatment from October 2008 to his discharge in February 2009. During treatment, the attending counselor, who was not a licensed clinical social worker (LCSW), indicated that Applicant did not meet the criteria of alcohol dependence. The treatment will be discussed in greater detail below under Alcohol History and Rehabilitative Efforts.

On November 18, 2009, the supervising clinician (LCSW) informed the sentencing court that Applicant completed a 24-session domestic violence treatment program and was considered fully capable of controlling the behaviors that resulted in the previous incidents of domestic problems. (GE 14 at 49) Applicant does not believe this conduct will be repeated because he learned from the domestic violence treatment to manage his anger by walking away from encounters rather than acting out, and then returning to the situation after both parties have calmed down. (Tr. 69) On reflection, Applicant should have had the police rather than his new girlfriend accompany him to the former girlfriend's house to get his clothes. (GE 2 at 2)

SOR ¶ 1.a. Before his arrest and charge for driving under the influence of alcohol (DUI) on January 19, 2008, Applicant (age 21) testified that he consumed two whiskey shots and a couple of beers. (Tr. 48) He told the OPM investigator he had been drinking a lot from about 11:00 p.m. to 2:30 a.m. (GE 2 at 3) The arresting officer detected an odor of alcohol and observed Applicant's eyes were red and glassy. After failing three field sobriety tests, Applicant registered a .106 on his blood/alcohol test. (GE 7) He did not dispute the charge because he was under the influence of alcohol. (Tr. 48) On March 13, 2008, Applicant pled guilty to DUI and was sentenced to 180 days (90 days suspended) and one year probation. (GE 7) As explained under **SOR ¶ 1.e** above, Applicant was never notified that his sentence for this charge included a license suspension. (Tr. 48)

SOR ¶ 1.d. On July 12, 2007, Applicant was charged with driving on a suspended license. He was found guilty and fined \$750. His license was suspended for 10 days. (GE 9, GE 2 at 3)

SOR ¶ 1.g. On September 1, 2006, Applicant was arrested and charged with assault and battery and telephone threats. He was sitting in a car with his former girlfriend who was six months pregnant at the time. She stated she needed to take a paternity test to establish the biological father of the unborn child. (GE 2 at 3) Applicant became mad and shut the car door on his former girlfriend's knee, dislodging the inside car door panel. (GE 11 at 3) The telephone threats were vulgar calls he made to the former girlfriend (in response to her repeated telephone calls) imploring her to stop the calls and leave him alone. (Tr. 72-74) Applicant pled no contest to an amended misdemeanor charge of destruction of private property. He received a six-month deferred finding on the offense and was required to provide restitution to the victim. On November 29, 2006, Applicant satisfied the court-ordered restitution. (GE 11 at 11) Applicant does not believe the incident will be repeated because he is married. (GE 2 at 4)

SOR ¶ 1.c. Applicant admitted that in March 2005, he was driving his auto after he had consumed five or six beers. (Tr. 50) The police stopped him because he was swerving. He was arrested for DUI after failing a field sobriety test. Because he was under the age of 21, he pled to the amended charge of driving after underage drinking. Applicant could not recall the sentence, but indicated that his driver's license could have been suspended. (GE 2 at 3)

SOR ¶ 1.f. In April 2003, Applicant was attending a youth program and stole a public school purchasing credit card from a secretary's desk. Together with another teenager, Applicant went to a discount department store and purchased electronic products valued at \$750. After the police were informed of the electronics purchase with the stolen credit card, they advised Applicant he would be charged with use of a stolen credit card, along with other charges. He turned himself in and returned the merchandise to the police. Applicant was found guilty of petty larceny (credit card theft). He was sentenced to one year probation, and ordered to provide restitution of \$750. He was also required to undergo mandatory drug testing. In August 2004, after committing curfew violations and many probation violations for failing marijuana drug tests, Applicant's petty larceny probation (**SOR ¶ 1.f**) was revoked. He was incarcerated in a juvenile facility until his 18th birthday in September 2004, then transferred to an adult facility until his discharge in November 2004. (Tr. 54, 61-62; GE 2 at 4-5)

Alcohol History and Rehabilitative Efforts

Applicant stated to the OPM investigator in June 2010, that he began drinking alcohol and getting drunk in 2001 or 2002, when he was about 15 or 16 years old. Before his January 2008 DUI (**SOR ¶ 1.a**), Applicant described his alcohol consumption history as getting drunk every Friday or Saturday night. He would drink and drive once every two or three weeks. (GE 2 at 6)

SOR ¶ 2.a. From October 2003 to March 2004, Applicant attended a court-ordered outpatient substance abuse program and participated in Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). (GE 3 at 2, GE 15 at 1-2)¹ During the early portion of this treatment, the attending counselor evaluated him as alcohol and drug dependent. (GE 2 at 6)² Applicant recalled participating in all the meetings required by the treatment from October 2003 to March 2004. (Tr. 52-53)

During a two-week inpatient treatment program in May 2004, anger management and poor impulse control were additional issues addressed along with Applicant's alcohol and drug dependence. He did not complete the entire program, and was discharged on May 27, 2004 because of negative behaviors during treatment. It was recommended that he participate in an intensive outpatient treatment program, that he attend a 12-step program, that he seek a sober support network, and that he obtain a sponsor. (GE 15 at 2)

After his assault and battery conviction in August 2008, Applicant received court-ordered outpatient treatment from October 1, 2008 to February 18, 2009. (GE 14 at 1-14) This treatment occurred at the same facility where he received treatment from October 2003 to March 2004. (**SOR ¶ 2.a**) At the beginning of treatment, Applicant advised the counselor that he had quit all drugs and alcohol in January 2008, but had

¹ There are no medical records of Applicant's treatment from October 2003 to March 2004.

² There is no indication in the record whether the counselor was a LCSW,

one or two beers on his birthday in September 2008. Though the counselor noted early in treatment that Applicant did not meet the criteria for alcohol dependence, she established a plan for Applicant to attend Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings, so that he could comprehend how important total abstinence was to his life. (GE 14 at 23) On January 8, 2009, after confirming Applicant was attending AA meetings and had a sponsor, the counselor noted, that Applicant had successfully completed treatment by meeting goals and completing homework as required. (GE 14 at 21) In the counselor's discharge summary dated February 18, 2009, she recommended that Applicant "continue attending [AA] meetings as able/ needed to continue contact with sponsor." (GE 14 at 58)

Applicant told the OPM investigator in June 2010, that after the DUI in January 2008, he reduced his drinking to a couple of beers on special occasions. (GE 2 at 6) On August 12, 2011, he described his consumption as a couple of drinks on the weekends and at social events. He did not drink during the week because of work and school. He stated that he matured a lot when he started a family in 2008. (GE 3 at 3)

SOR ¶ 2.b. In a letter dated October 13, 2011, Applicant was advised by DOHA adjudicators to make an appointment for an evaluation by a credentialed medical professional or LCSW who was a staff member of a recognized alcohol treatment team. The reason for this evaluation was his resumption of alcohol consumption following treatment. (GE 16)

On November 4, 2011, a Licensed Clinical Social Worker (LCSW) conducted a clinical interview of Applicant regarding his employment history, drug and alcohol use, legal history, and psychiatric status. In the clinical interview, Applicant told the LCSW that he used alcohol once in the last 30 days with alcohol use on a regular basis in the last nine years. He indicated he had been treated three times for alcohol abuse and two times for drug abuse. Applicant told the LCSW that he was not in counseling or AA/NA during the past 30 days, and did not think he needed alcohol or drug treatment. He continued to use alcohol, but believed he had his consumption under control. (GE 17 at 2-3)

The LCSW also administered several diagnostic tests. One test indicated Applicant's high probability for substance abuse. Applicant scored high on the defensiveness scale indicating guarded responses. (GE 17 at 5) Based on the alcohol-related incident in January 2008 (**SOR ¶ 1.a**), the LCSW concluded that according to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) criteria, Applicant met the diagnosis of alcohol dependence in 2008. In his opinion, Applicant still maintained that diagnosis, but in "sustained full remission." The LCSW chose the "sustained full remission" specifier because Applicant met none of the criteria for dependence at any time for a period of at least 12 months. (GE 17 at 5) See also AE D and AE E. The LCSW offered no prognosis in his evaluation.

The last section of the social worker's evaluation is entitled "Recommendation for Treatment." The social worker indicated, "Mr. [Applicant] does not require any treatment

at this time. However, it is noted that Mr. [Applicant] should maintain a lifestyle that is free of mind and mood altering chemicals, such as alcohol or other drugs.” (GE 17 at 6) Applicant interprets the above quotation as an observation rather than a recommendation by the LCSW to stop using alcohol. (Tr. 70)

At the hearing, Applicant confirmed that he was still drinking alcohol, but only on special occasions and social events. He drinks to intoxication occasionally, not frequently. He estimated that he became intoxicated about three times in the last six months. Applicant testified that since January 2008, he has not driven a car after drinking. He has never had any alcohol-related problems with his wife, children, or police. (Tr. 62-65)

Drug History and Rehabilitative Efforts

SOR ¶ 3.a. Applicant began smoking marijuana in 2002 when he was 15 years old. At that time, he smoked the drug from a bowl but never purchased it. Between 2004 and July 2008, he used the drug daily in neighborhood parks or wooded areas. Applicant sometimes purchased marijuana from dealers in the town where he lived. Between 2003 and July 2008, he smoked marijuana with his current wife, and two former girlfriends referenced in **SOR ¶¶ 1.b** and **1.g**. He did not want to smoke the drug at work, but sometimes did. (GE 2 at 6) In August 2004, Applicant’s petty larceny probation (**SOR ¶ 1.f**) was terminated for earlier curfew violations and many failed marijuana tests. (Tr. 52-53) See also discussion under **SOR ¶ 1.f** above. Applicant stopped using marijuana in July 2008 because of a change in his lifestyle and raising a family. He also did not want to jeopardize his probation for the **SOR ¶ 1.b** offense. (GE 2 at 6)

SOR ¶ 3.b. Peer pressure was the reason Applicant began using cocaine between January 2005 and January 2006. He used the drug once or twice a month. Sometimes he purchased the drug from dealers spending about \$200 a month. He used the drug with his current wife and former girlfriends. He stopped using cocaine because it interfered with his sleep and was too expensive. He also matured. (GE 2 at 6-7)

SOR ¶ 3.c. Driven by peer pressure, Applicant experimented with crack cocaine between May and July 2005. He stopped using the drug because it made him paranoid and he did not like it. In addition, he matured. (GE 2 at 7)

Though Applicant may come in contact with drug users at family functions, he is never present when drugs are used. If he discovers they are being used, he will leave the area. (GE 3 at 1-2) On May 30, 2012, Applicant submitted a notarized signed statement of intent with automatic revocation of his clearance for any violation. Except for the commission of traffic offenses, Applicant’s clearance would automatically be revoked. (AE A)

Character Evidence

On May 10, 2012, the senior program manager authored a character reference in Applicant's behalf. In the senior program manager's opinion, Applicant's job performance has demonstrated a dedicated level of commitment to overall mission objectives. (AE B)

On May 24, 2012, the principal engineer at Applicant's employer provided a character reference. For two years, Applicant has acquired a respected reputation from his coworkers, management, and the client, for his trustworthiness and his attention to detail.

Applicant provided information concerning the specifier of "sustained full remission." (AE D) Applicant also submitted information about alcohol abuse and dependence and non-alcohol abuse and dependence. (AE E) This information is discussed in the DSM-IV.

Policies

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a careful, thorough evaluation of the specific guidelines in the context nine general factors known as the "whole-person concept," that brings together all available, reliable information about the person, past and present, favorable and unfavorable. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of the potential, rather than actual, risk of compromise of classified information.

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 for obtaining a favorable security decision.

Analysis

Criminal Conduct

The security concern for criminal conduct is set forth in 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.

AG ¶ 31 of the criminal conduct guideline lists two disqualifying conditions that may be applicable to this case:

AG ¶ 31(a) a single serious crime or multiple lesser offenses; and

AG ¶ 31(c) allegation or admission of criminal conduct, regardless of whether the person was formally prosecuted or convicted.

Applicant's criminal conduct occurred between April 2003 and January 2008. As a juvenile, he was found guilty of petty larceny of a public school credit card in April 2003. He illegally used the card to purchase \$750 of electronics. In August 2004, his petty larceny probation was revoked for curfew violations and failing many drug tests. He was incarcerated for three months until November 2004. In March 2005, he pled guilty to driving after underage drinking. In September 2006, Applicant pled no contest to destruction of private property after becoming mad and kicking his former girlfriend's car door. In August 2007, Applicant was found guilty of driving on a suspended license.

After reaching his 21st birthday in September 2007, Applicant consumed a large amount of alcohol and committed a DUI in January 2008. In the same month, he became entangled in a physical confrontation with his former girlfriend after consuming an unknown amount of alcohol. In August 2008, Applicant pled guilty to assault and battery on a family member (former girlfriend) and destruction of property. Considering the evidence as a whole, there is sufficient evidence under AG ¶¶ 31(a) and 31(c) to shift the burden to Applicant to submit evidence in explanation, mitigation, rebuttal, or extenuation.

AG ¶ 32 lists two mitigating conditions that may be applicable in this case.

AG ¶ 32(a) so much time has passed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and,

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 development.

The most important element of AG ¶ 32(a), "so much time has elapsed since the criminal behavior happened," focuses on the recency of the criminal conduct. Although there is no litmus test for determining "recency," if the record demonstrates a significant passage of time without adverse conduct, then the administrative judge must decide whether the period of time presents a changed lifestyle supporting a finding of rehabilitation.

AG ¶ 32(a) applies to Applicant's criminal conduct because more than four years have elapsed since his most recent criminal conduct. He was discharged from probation almost two years ago for the assault and battery offense. The circumstances that

culminated in this offense are unlikely to recur because Applicant no longer lives with the victim and is married to another woman.

AG ¶ 32(d) applies. The passage of time has already been discussed under AG ¶ 32(a). Applicant's successful completion of domestic violence treatment in November 2009 has helped him manage his anger and control his behavior in domestic situations. Applicant's scholastic achievements and his good job performance are two additional reasons for favorably applying AG ¶ 32(d).

Alcohol Consumption (AC)

AG ¶ 21 sets forth the security concern under 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 has three conditions that may be disqualifying:

AG ¶ 22(a) alcohol-related incidents away from work regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

AG ¶ 22(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual has been diagnosed as an alcohol abuser or alcohol dependent;

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.

Applicant was 15 years old when he began consuming alcohol. Before his DUI in January 2008, he got drunk every Friday or Saturday night, and would drink and drive every two or three weeks. AG ¶ 22(c) applies.

During his outpatient treatment for alcohol and drugs from October 2003 to March 2004, he was evaluated as alcohol dependent. Even though there is no record evidence to support Applicant's treatment from October 2003 to March 2004, or the qualifications of the counselor who made the alcohol dependence evaluation, the Government is not required to produce evidence concerning allegations that Applicant admits. See Directive ¶ E3.1.14. Regarding his May 2004 inpatient treatment, Applicant's anger and impulse control were additional issues addressed along with his alcohol and drug dependence. AG ¶ 22(e) applies.

In March 2005, Applicant pled guilty to driving after underage drinking. On January 19, 2008, he committed a DUI. On January 22, 2008, he was involved in an

assault and destruction of property. He ultimately admitted he had been drinking before the incident. AG ¶ 22 (a) applies.

There are four conditions that potentially mitigate Applicant's alcohol consumption:

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;

AG ¶ 23(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

AG ¶ 23(c) the individual is a current employee who participating in counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

AG ¶ 23(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 contends that he has mitigated the alcohol consumption guideline by changing his lifestyle and raising a family. He maintains that he has controlled his drinking since his January 2008 by drinking only at social events or at family outings. Since January 2008, he stresses that he has not driven a car after consuming alcohol. Given his history of excessive alcohol consumption, I am unable to apply AG ¶ 23(a). He drank habitually to excess for more than five years. While he was convicted of driving after underage drinking in 2005, and DUI in January 2008, he admittedly drove a car under the influence on additional occasions, but was not caught. Applicant's ongoing drinking, occasionally to intoxication, continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 23(b) does not apply. If Applicant fully acknowledged the nature and scope of his alcohol dependence, he would cease using alcohol altogether. Rather, he has decided to continue drinking alcohol, occasionally to intoxicating levels.

AG ¶ 23(c) does not apply since Applicant is not pursuing any treatment or counseling in AA or similar organization as recommended by his attending counselor in February 2009.

I have carefully reviewed Applicant's successful alcohol outpatient treatment in February 2009. However, his treatment does not satisfy the requirements of AG ¶ 23(d). The attending counselor was not a LCSW. Also, Applicant's successful discharge from treatment in February 2009 lacks a favorable prognosis and an established pattern of abstinence as required under the mitigating condition. Finally, there is no participation in AA as recommended by the attending counselor.

In November 2011, a LCSW interviewed Applicant and administered a test that showed Applicant had a high probability for substance abuse and defensiveness indicating guarded responses. Based on the clinical interview revealing Applicant's history of alcohol-related offenses and alcohol treatment, and that he continued to use alcohol, the LCSW concluded that Applicant met the DSM-IV criteria for alcohol dependence in 2008, and still maintained the diagnosis in November 2011.

Even though Applicant indicated he continued to drink alcohol, the LCSW nonetheless concluded that the DSM-IV criteria for dependence had not been met at any time during the past 12 months. He found that Applicant met the DSM-IV specifier of "sustained full remission." In his report, the LCSW did not offer a prognosis as to whether Applicant's ongoing use of alcohol placed him at risk of a relapse. After weighing LCSW's evaluation without a prognosis against Applicant's continued drinking, the "sustained full remission" specifier is unsupportable. The specifier is discredited even more by Applicant's more recent testimony that he occasionally drinks to intoxication. AG ¶ 23(d) does not apply.

Drug involvement

Paragraph 24 of the AG sets forth the security concern under drug involvement:

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 to willingness to comply with laws, rules and regulations.

The conditions that may be disqualifying are:

AG ¶ 25(a) any drug use;

AG ¶ 25(b) testing positive for illegal drug use;

AG ¶ 25(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(d) diagnosis by a duly qualified medical professional of drug abuse or drug dependence.

Applicant smoked marijuana from 2002 to July 2008. As a juvenile, he violated probation many times for testing positive for marijuana. He was diagnosed as drug dependent during his treatment from October 2003 to March 2004. Between 2004 and July 2008, he used the drug daily and sometimes purchased the drug from dealers. AE ¶¶ 25(a), (b), (c), and (e) apply.

The two potentially mitigating conditions under the drug involvement guideline are:

AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); and

AG ¶ 26(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 are used, (3) an appropriate period of abstinence, and a signed statement of intent with automatic revocation of clearance for any violation.

Applicant's dependence on marijuana is substantiated by the evaluation made by the attending counselor during Applicant's outpatient treatment from October 2003 to March 2004. His dependence on marijuana is supported by many drug tests he failed for using the drug, resulting in the revocation of the petty larceny probation in August 2004. Applicant has consistently maintained in his testimony and all the government exhibits that he stopped using marijuana in July 2008. There is no evidence that infers or suggests drug use since that time. Even though the marijuana use did not end until July 2008, and was not infrequent, I do not believe he will resume drug use because he has matured and has a family. AG 26(a) applies in part.

Though he has not completely removed himself from the drug environment, he has become vigilant about the company he keeps. Applicant has abstained from all drug use for at least three and one-half years. There is no evidence of cocaine or crack cocaine use in more than six years. Given his efforts to avoid the drug user's environment, his sustained abstinence, and his signed statement of intention not to engage in future drug use, AG ¶ 26(b) is resolved in Applicant's favor.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions under the criminal conduct, alcohol consumption, and drug involvement guidelines. I have also weighed the circumstances within the context of nine variables known as the

whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 25 years old and has been married since December 2008. He has five children, three from his current wife. He adopted her child from a previous relationship, and also has joint custody of a stepchild. He has developed a favorable reputation from his supervisors and coworkers since beginning his employment as a technical assistant in April 2010.

Applicant has a fairly extensive history of criminal conduct. As a juvenile, he committed four offenses and numerous probation violations for failing drug tests. As an adult, he drove a car on a suspended license, he committed a DUI, and he assaulted his former girlfriend. After weighing the disqualifying evidence against the mitigating evidence, more than three and one-half years have passed since Applicant's most recent criminal conduct. He has matured and has a family now. He has clearly benefitted from domestic violence therapy that he successfully completed in November 2009. The foregoing factors and a good scholastic record are sufficient to find the criminal conduct guideline in Applicant's favor.

The drug involvement guideline is also resolved in his favor because he has grown up and has a family. In view of his sustained period of abstinence from drugs, his efforts to avoid the drug environment, and his written statement to accept automatic revocation of clearance for future drug use, Applicant has persuasively made his case that he will not use drugs in the future.

By contrast, Applicant's drinking at social events, family outings, and occasional drinking to intoxication, his history of habitual use of alcohol to excess, and LCSW's evaluation of alcohol dependence, raise doubts about his commitment to sobriety. Applicant's continued drinking occasionally to intoxication substantially discredits the "sustained full remission" specifier.

Based upon a careful review of the specific disqualifying and mitigating conditions, and evaluating the entire record in the context of the whole person,

Applicant has mitigated the criminal conduct and drug involvement guidelines, but has not carried his ultimate burden of persuasion under the alcohol consumption guideline. See AG ¶¶ 2(a)(1) through 2(a)(9).

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):	FOR APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant
Paragraph 2 (Guideline G):	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant
Paragraph 3 (Guideline H):	FOR APPLICANT
Subparagraphs 3.a through 3.c:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge