



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



In the matter of:)
)
-----) ISCR Case No. 11-09595
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

08/07/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding alcohol consumption, drug involvement, and psychological conditions. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On April 13, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On an unspecified date, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on September 26, 2012.² On March 5, 2013, the DOD issued a Statement of Reasons (SOR) to him,³

¹ GE 1 (SF 86, dated April 13, 2011).

² GE 2 (Applicant's Answers to Interrogatories, dated September 26, 2012).

³ It appears that an earlier version of the SOR, dated February 27, 2013, signed by the same personnel security specialist as the March 2013 version, was prepared and placed in the correspondence file portion of the case file submitted to me when the case was assigned. While the versions are similar, there are substantial differences. There is no evidence that the document was ever actually sent to Applicant, and he never received that version of the SOR.

under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guidelines G (Alcohol Consumption), H (Drug Involvement), and I (Psychological Conditions), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on March 21, 2013. In a sworn statement, dated April 4, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 30, 2013. The case was assigned to me on June 5, 2013. A Notice of Hearing was issued on June 7, 2013, and I convened the hearing, as scheduled, on June 25, 2013.

During the hearing, five Government exhibits (GE 1 through GE 5) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on July 8, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted 17 documents which were marked as Applicant exhibits (AE A through AE Q) and admitted into evidence as without objection. The record closed on July 8, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in the SOR under alcohol consumption (§§ 1.a. through 1.i.) and one factual allegation under drug involvement (§ 2.b.). He admitted portions of other factual allegations under drug involvement (§§ 2.a., 2.c., and 2.d.), as well as a portion of an allegation under psychological conditions (§ 3.b.). He denied the remaining allegations. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 49-year-old employee of a defense contractor. He has been serving as a sheet metal technician with his current employer since February 2011. He was previously employed as a sheet metal mechanic, and aircraft mechanic.⁴ He was unemployed from February 2010 until February 2011, and from October 2009 until February 2010, he was a full-time care giver for his terminally ill parents.⁵ Applicant

⁴ GE 1, *supra* note 1, at 17, 20-21.

⁵ GE 1, *supra* note 1, at 18-19, 51, 54-55.

never served in the U.S. military,⁶ and never held a security clearance.⁷ He graduated from high school in May 1981, and attended college for about six months. Applicant was married the first time (to a binge drinker) in June 1996, and divorced in May 2001. He married his current wife (a heavy drinker with bipolar disorder) in March 2004. They separated in May 2013.⁸

Alcohol Consumption & Drug Involvement

Applicant was a substance abuser whose substances of choice were alcohol and several illegal drugs, including marijuana, as well as a variety of prescription drugs, including opiates (methadone, hydrocodone, and oxycodone (also known as OxyContin®), and Xanax®. His use of alcohol resulted in six incidents involving the police and judicial authorities. He was arrested and charged with driving under the influence (DUI) in 1988, on two occasions in 1992, and once in 2009; arrested for public intoxication in 2000; and arrested for strangulation – domestic abuse in 2009. The 2009 incident also involved an arrest and charge for possession of marijuana.⁹

He began consuming alcohol with friends at bars and at home when he was 16 years old. From that point until he was about 20 years old, he consumed two to three beers at a time once each month. His alcohol consumption increased to two beers every day and to the point of intoxication every weekend. There were periods when he would quit drinking for weeks or months at a time, only to return to binge drinking on weekends. At one point in 2000, after consuming 14 glasses of wine and a little liquor, blacking out, and attempting to commit suicide by cutting his throat,¹⁰ he decided to stop consuming alcohol. His abstinence was sustained until 2006. Starting in 2006, he resumed his alcohol consumption, going to bars three times per week for three or four beers and mixed drinks each time. In December 2008, the quantity increased to six beers per night with at least 10 to 14 beers and 3 to 4 shots each day on the weekends. In June 2009, Applicant's consumption decreased to about 12 beers, with no more than 2 at a time.¹¹ He took his last drink on February 11, 2010, and has been abstinent since that time.¹²

Although Applicant was unable to quantify the amount of alcohol it might take to make him intoxicated, he acknowledged that each time he consumed alcohol it was with the intent of becoming intoxicated.¹³ Alcohol made him mellow, and caused him to black

⁶ GE 1, *supra* note 1, at 23.

⁷ GE 1, *supra* note 1, at 37.

⁸ GE 1, *supra* note 1, at 24-26; Tr. at 52, 55; Tr. at 31-32.

⁹ GE 3 (Federal Bureau of Investigation (FBI) Identification Record, dated April 29, 2011).

¹⁰ Tr. at 42.

¹¹ GE 2 (Personal Subject Interview, dated May 24, 2011), at 4-5.

¹² Tr. at 46.

¹³ GE 2, *supra* note 11, at 5.

out. He admits he has a problem with alcohol. He no longer has any desire to consume it.¹⁴

Applicant first smoked marijuana when he was 10 years old.¹⁵ He continued using marijuana throughout his teenage years.¹⁶ By December 2008, he was taking two to three puffs from marijuana cigarettes or a marijuana pipe at bars with friends.¹⁷ In 2004, Applicant, referring to the period before 2000, said he would “smoke marijuana daily if it was available,” and added that he “thought of moving out of the country so that he could smoke marijuana legally,” something he now considers to be ridiculous.¹⁸ Applicant used the marijuana because he believed it helped his back (he sustained a herniated disc in 1997) and knee pain. He never sold, supplied, manufactured, or grew marijuana, and never flunked any of the many random drug tests that were administered to him.¹⁹ Applicant stopped using marijuana in October 2004, but resumed smoking it in November or December 2008.²⁰ Applicant stopped using marijuana in February 2009, following his arrest, and he has abstained from marijuana use since that time.²¹

At some point in his life, for an unspecified period of time before February 2004, Applicant experimented with illegal drugs, including lysergic acid diethylamide (LSD); MDMA (3, 4-methylenedioxy-*N*-methylamphetamine), known as ecstasy; crystal meth; and cocaine.²² The quantity and frequency of such use has not been described.

During the period from August 2003 until June 2004, a physician prescribed Xanax® and Prozac® to treat Applicant’s anxiety and depression, and hydrocodone, oxycodone, and Percocet®, a combination of acetaminophen and oxycodone, to alleviate his back and knee pain.²³ When his prescriptions expired, Applicant self-medicated by either purchasing the drugs from a coworker or obtaining them from friends who no longer needed their own prescribed drugs. He continued to use the drugs as originally prescribed for him to alleviate his psychological and physical

¹⁴ GE 2, *supra* note 11, at 5.

¹⁵ Applicant’s Answer to the SOR, at 3.

¹⁶ Applicant’s Answer to the SOR, *supra* note 15, at 3.

¹⁷ GE 2, *supra* note 11, at 5-6.

¹⁸ GE 4 (Medical Records – Discharge Summary, dated October 8, 2004), at 1; Tr. at 65-67.

¹⁹ GE 2, *supra* note 11, at 6; Tr. at 33, 66.

²⁰ Tr. at 70-71.

²¹ GE 2, *supra* note 11, at 6.

²² GE 2 (Medical Records – Addiction Recovery Programs Patient Profile, dated August 2, 2004); Tr. at 73-74.

²³ GE 2, *supra* note 11, at 6; Tr. at 36, 43-44.

problems.²⁴ He never sold, supplied, or manufactured, any of the drugs he used. Applicant stopped using the illegal drugs other than marijuana before February 2004, and, with the exception of drugs that were prescribed for him, he stopped using or misusing all other prescription drugs in August 2004. Instead, he started using Aleve® to handle the remaining pain.²⁵

Applicant's abuse of alcohol and drugs resulted in several episodes of treatment, education, or aftercare. Following his 1988 alcohol-related arrest, Applicant complied with the court mandate that he attend 15 meetings of Alcohol Anonymous (AA).²⁶ Following his alcohol-related 2000 arrest, Applicant started to attend periodic meetings of AA because he was concerned about his black out and his suicide attempt.²⁷ It is unclear just how long he continued to do so. In September 2000, Applicant underwent a 28 day alcohol-related substance abuse therapy program.²⁸

In August 2004, concerned about his substance abuse, inability to concentrate at work, and "sick of drugs," Applicant enrolled in a 19-day inpatient program, followed by 90-day outpatient substance abuse program at the local medical center. Because of his polysubstance abuse, he was administered phenobarbital for seven days. He was treated by a team consisting of a doctor of medicine (M.D.), a doctor of osteopathic medicine (D.O.), a program manager with a master's degree, and a substance abuse counselor who is a Master's Level Addiction Professional (MLAP). No psychological testing was performed, no psychiatric consultations were requested, and no recommendations were made.²⁹

The discharge diagnoses were as follows: Axis I, polysubstance dependence & major depressive disorder (MDD); Axis II, deferred; Axis III, none; Axis IV, moderate; and Axis V, Global Assessment of Functioning (GAF) 70.³⁰ There was no prognosis made. Applicant was discharged from the program in October 2004 with recommendations to attend at least three 12-step meetings per week; maintain a working relationship with a sponsor; participate in continuing care on a weekly basis;

²⁴ GE 2, *supra* note 11, at 6.

²⁵ GE 2, *supra* note 11, at 6; Applicant's Answer to the SOR, *supra* note 14, at 3; Tr. at 39-40, 59-60.

²⁶ GE 1, *supra* note 1, at 35.

²⁷ GE 2, *supra* note 11, at 4.

²⁸ GE 2, *supra* note 2, at 9.

²⁹ GE 4, *supra* note 18.

³⁰ GE 4, *supra* note 18; Tr. at 37-38. The diagnosis of polysubstance dependence is reserved for behavior during the same 12-month period in which an individual repeatedly used at least three groups of substances, but no single substance predominated. In this instance, possible groups of substances that Applicant admitted using include alcohol, marijuana, cocaine, hallucinogens, opioids, etc. In those situations where there are problems associated with multiple drugs and the criteria are met for more than one specific substance-related disorder (e.g., alcohol dependence and marijuana dependence), each diagnosis should be made. See, *Diagnostic and Statistical Manual of Mental Disorders Fourth Edition Revised* (DSM-IV-TR), at 293-294.

and participate in individual/family therapy.³¹ It is unclear how long Applicant complied with the recommendations.

As noted above, Applicant resumed his consumption of alcohol in 2006, and his use of marijuana in November or December 2008, long after his 2004 discharge from the outpatient substance abuse program. In 2009, after his DUI/marijuana arrest, he was ordered to attend an alcohol awareness class and attend counseling.³² He complied with the order and in May 2009, he started 20 hours of alcohol and drug education, along with 24 hours of cognitive/behavioral group therapy. He underwent five urine analyses, all of which were negative for alcohol or illegal substances. Applicant successfully completed his treatment program on July 27, 2009.³³ He resumed his attendance at AA meetings, is in the 12-step program, currently attends one or two meetings per week, and meets with his sponsor at least once each week when he is in town, or they speak by phone when he is out of town.³⁴

Psychological Conditions

As noted above, when Applicant was discharged from the 90-day outpatient substance abuse program in October 2004, no Axis II personality disorders were noted or diagnosed, and the report simply said “deferred.” In 2009, he started 20 hours of alcohol and drug education, along with 24 hours of cognitive/behavioral group therapy.

The SOR, as amended, alleged that Applicant was not compliant with his prescribed medication following his suicidal attempt in 2000. While there is evidence that Applicant had experimented with a variety of illegal drugs and self-medicated with other prescription drugs, there is little evidence that Applicant failed to comply with any prescribed medication for his depression. The self-medication was primarily to control pain, and not to alleviate anxiety or depression. Department Counsel conceded, and I concur, that Applicant’s suicidal attempt or gesture was alcohol-induced rather than an action brought about by a significant psychological defect or deficit.³⁵

Character References and Work Performance

Applicant’s work performance appraisals from his employers over an extensive period generally reflected an individual whose overall performance exceeds expectations.³⁶ Among the additional comments appearing in those performance

³¹ GE 4, *supra* note 18.

³² Applicant’s Answer to the SOR, *supra* note 15, at 2.

³³ Applicant’s Answer to the SOR, *supra* note 15, at 3; GE 2, *supra* note 2, at 11; GE 2, *supra* note 11, at 3; GE 5 (Treatment Summary, undated). It should be noted that the Treatment Summary indicated that Applicant completed his program in 2012, but Applicant and the evidence support an ending date of 2009.

³⁴ Tr. at 46-48; GE 2, *supra* note 2, at 5.

³⁵ Tr. at 79-80.

³⁶ AE C (90 Day Review, dated June 2, 2011); AE D (Annual Performance Review, dated February 23, 2012); AE H (Inter-Crew Transfer, dated June 15, 1990); AE I (Performance Appraisal, dated September 12, 1993);

appraisals were the following: “He is reliable in every respect;”³⁷ “He is a team player, fiercely loyal and dedicated to his job and the company. He can always be counted on no matter what the situation is;”³⁸ and “His work ethic is above reproach.”³⁹ Various program managers and supervisors were effusive with praise for Applicant’s efforts, significant contributions, willingness to assume responsibility, excellent work ethic, professionalism, high motivation, dedication, organization, technical expertise, and personal leadership.⁴⁰

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁴¹ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁴²

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all

AE J (Performance Appraisal, dated September 12, 1992); AE K (Performance Appraisal, dated September 12, 1994); AE L (Performance Appraisal, dated September 12, 1994); AE M (Performance Appraisal, dated September 12, 1995); AE N (Performance Appraisal, dated June 21, 1996).

³⁷ AE M, *supra* note 36, at 2.

³⁸ AE J, *supra* note 36, at 2.

³⁹ AE H, *supra* note 36, at 2.

⁴⁰ AE A (Character Reference, undated); AE B (Character Reference, undated); AE F (Letter, dated July 14, 1998); AE G (Letter, dated May 20, 1993); AE O (Character Reference, undated).

⁴¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁴³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁴

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁴⁵

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴⁶ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

⁴³ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁴⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁵ *Egan*, 484 U.S. at 531

⁴⁶ See Exec. Or. 10865 § 7.

Analysis

Guideline G, Alcohol Consumption

The security concern relating to the guideline 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 22(a), *alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* is potentially disqualifying. In addition, *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*, may apply under AG ¶ 22(c). Similarly, a *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence* is of security significance under AG ¶ 22(d). Additionally, an *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 potentially disqualifying under AG ¶ 22(e). Also, AG ¶ 22(f) may apply if there is a *relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program*.

AG ¶ 22(a) has been established by Applicant's six alcohol-related incidents involving the police and judicial authorities. AG ¶ 22(c) has been established because Applicant repeatedly consumed alcohol to the point of impaired judgment, intoxication, and blackout. AG ¶ 22(f) has been established by Applicant's continued use of alcohol after completion of an alcohol rehabilitation program. AG ¶ 22(e) has not been established. While there may be a diagnosis that includes alcohol dependence, there is no evidence that a separate evaluation was ever made. In this regard, AG ¶ 22(d) has been partially established as the record is significantly silent regarding a specific diagnosis of "alcohol abuse or alcohol dependence," referring only to "polysubstance dependence."

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(a), the disqualifying condition may be mitigated where *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*. Similarly, when *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)*, AG ¶ 23(b) may apply. In addition, AG ¶ 23(d) may apply if:

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) applies. AG ¶¶ 23(a) and 23(d) partially apply. For a number of years, Applicant simply ignored his alcohol problems. He consumed alcohol with friends and his two wives with the intent of becoming intoxicated. It made him mellow. It also resulted in a variety of alcohol-related incidents and involvement with police and judicial authorities, costing him fines, the loss of his operator's license, brief periods of detention, and both voluntary and mandatory attendance at several alcohol-related treatment, education, and aftercare programs. It resulted in black outs and a suicide attempt or gesture.

In September 2000, Applicant underwent a 28-day alcohol-related substance abuse therapy program. But he continued to drink. Following his inpatient and outpatient treatment in 2004, Applicant abstained from further alcohol consumption until 2006, when he resumed his drinking. Following his arrest in 2009, Applicant completed 20 hours of alcohol and drug education, along with 24 hours of cognitive/behavioral group therapy. Something finally clicked, and on February 11, 2010, Applicant decided that alcohol was bad for him. He has been abstinent since that day. He resumed his attendance at AA meetings and currently attends one or two meetings per week, and meets or speaks with his sponsor at least once each week.

Applicant has been consistently candid about the significance of alcohol in his life. He was forthright in his estimations about the frequency and quantity of his alcohol consumption, and has not attempted to minimize his problem. While Applicant was, at times, initially unwilling or unable to curtail his alcohol consumption, there were also periods when he was able to do so. Applicant experienced slips and relapses following various alcohol treatment programs. As such, his conduct demonstrated a lack of judgment and/or a failure to control impulses which is inconsistent with the holder of a security clearance. It is significant that a separate diagnosis of alcohol dependence was not made under Axis I when Applicant was diagnosed with polysubstance dependence. This seemingly indicates that his alcohol issues were insufficient to meet the criteria for the alcohol-related disorders. I acknowledge that Applicant abstained from alcohol from late 2004 until 2006, before resuming his consumption of alcohol. This time, however, his abstinence since February 2010 is accompanied by the abstinence from drugs as well as his new conviction and intention to remain abstinent from all the substances with which he had problems. Applicant's three-and-one-half years of abstinence is viewed favorably, and he should be encouraged to continue it and aftercare treatment. Applicant has furnished substantial evidence of positive actions taken to overcome his alcohol problem, and has established a pattern of abstinence that enables me to conclude that his alcohol problem has been put behind him and will not recur.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 25(a), *any drug abuse (see above definition)*, is potentially disqualifying. Similarly, under AG ¶ 25(c), *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*, may raise security concerns. Also, where there is a *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*, AG ¶ 25(d) may apply. In addition, AG ¶ 25(e) may apply where there is an *evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program*.

Applicant's use of drugs actually consists of two separate types of drug use. He used illegal drugs and he misused prescription drugs. Applicant routinely purchased and used marijuana, but he never sold, supplied, or manufactured it. He also experimented with LSD, ecstasy, crystal meth, and cocaine. When his prescriptions for hydrocodone, oxycodone, and Percocet® expired, Applicant self-medicated by purchasing the drugs from a coworker or friends. He never sold, supplied, or manufactured, any of the drugs he used. Applicant's abuse of marijuana resulted in one arrest for possession of marijuana and several substance abuse treatment or aftercare programs. He was diagnosed with polysubstance dependence by a duly qualified medical professional. AG ¶¶ 25(a), 25(c), and 25(d) have been established. AG ¶ 25(e) has not been established. While there may be a diagnosis that includes polysubstance dependence, there is no evidence that a separate evaluation was ever made.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying conditions may be mitigated where *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.* Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is 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;

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

When the *abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended,* AG ¶ 26(c) may apply. In addition, AG ¶ 26(d) may apply where there is *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.*

AG ¶¶ 26(b), 26(c), and 26(d) apply. AG ¶ 26(a) does not apply. Applicant's experimentation with LSD, ecstasy, crystal meth, and cocaine, ceased well before February 2004, and has not subsequently been repeated. His abuse of marijuana over a lengthy period of years finally ceased in February 2009, and he has abstained for the four and one-half years since then. His misuse, or unauthorized continued use, of the prescription drugs hydrocodone, oxycodone, and Percocet® after his prescriptions expired, ceased in August 2004. Applicant self-medicated using those pain killers to alleviate his back and knee pains. The eventual cumulative success of his inpatient, outpatient, and aftercare treatment, his new outlook regarding substance abuse, along with his continuing active and frequent participation in AA, and his period of sustained abstinence from any of the drugs, reflect Applicant's substantial efforts to demonstrate an intention not to abuse any drugs in the future. Applicant's drug abuse or misuse is unlikely to continue or recur, and no longer casts doubt on Applicant's reliability, trustworthiness, or good judgment.

Guideline I, Psychological Conditions

The security concern relating to the guideline for Psychological Conditions is set forth in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified

mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 28(a), *behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior*, may raise security concerns. Similarly, where *the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication*, AG ¶ 28(c) might apply. There is a diagnosis that includes MDD, but that diagnosis is not based on any psychological testing or psychiatric consultations, and no recommendations were made. There is also evidence that at some point before 2004, an unidentified physician prescribed Xanax and Prozac to treat Applicant's anxiety and depression. AG ¶ 28(a) minimally applies. Although the SOR alleged the failure to follow treatment advice related to his diagnosed emotional, mental, or personality condition, there is no evidence to support the allegations. AG ¶ 28(c) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from psychological conditions. If *the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan*, AG ¶ 29(a) might apply. Under AG ¶ 29(b), it is potentially mitigating where *the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional*. In addition, AG ¶ 29(e) may apply if *there is no indication of a current problem*.

AG ¶¶ 29(a) and 29(b) partially apply, and AG ¶ 29(e) applies. In this instance, Applicant's anxiety and depression were apparently controlled by Xanax and Prozac, and no recommendations were made regarding his MDD when he completed the 2004 treatment programs that he had voluntarily entered. No continuing treatment plan was established for his MDD. Other than Applicant's polysubstance dependence, there is no evidence of any abnormal behavior or poor work performance. To the contrary, even with his anxiety, depression, and MDD, Applicant's work performance remained outstanding. His conditions are seemingly treatable and controllable if he takes his prescribed medications. Moreover, with the reduction of several of the stressors in his life, including his continuing abstinence from alcohol and drugs, and the continued separation from his wife, with his medications, Applicant's judgment will no longer be impaired, and his condition will be under control. There is no evidence of a continuing or current problem.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines G, H, and I, in my analysis below.

There is substantial evidence supporting the security concerns. Applicant was a polysubstance abuser, diagnosed with polysubstance dependence, who experimented with LSD, ecstasy, crystal meth, and cocaine; routinely abused marijuana; self-medicated by purchasing and using hydrocodone, oxycodone, and Percocet®, when his own prescriptions expired; and consumed alcohol to the point of impairment, intoxication, and black out. The combination of his conditions caused him to make a suicide attempt or gesture in 2000. Applicant's abuse of alcohol and marijuana resulted in six incidents involving the police and judicial authorities. It also resulted in several treatment, education, or aftercare programs. There were several episodes of slips and relapses after completing treatment, education, or aftercare programs.

The mitigating evidence under the whole-person concept is more substantial. His experimentation with LSD, ecstasy, crystal meth, and cocaine, ceased well before February 2004; his misuse, or unauthorized continued use, of the prescription drugs hydrocodone, oxycodone, and Percocet®, ceased in August 2004; his abuse of marijuana finally ceased in February 2009, and he has abstained for the four and one-half years since then; his alcohol consumption ceased on February 11, 2010, and he has been abstinent since that day. He has not made a suicide attempt or gesture since 2000. After building on what he learned during his inpatient, outpatient, education, and aftercare programs, Applicant resumed his attendance at AA meetings. As noted above, Applicant's lengthy periods of alcohol and drug abstinence are viewed favorably, and he should be encouraged to continue them and his aftercare treatment. Applicant furnished substantial evidence of positive actions taken to overcome his polysubstance dependence for both drugs and alcohol, and has established a pattern of abstinence that enables me to conclude that his substance abuse problems, whether they be alcohol or drugs, have been put behind him and will not recur.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴⁷ Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. This decision should serve as a warning that his failure to continue his abstinence from alcohol and drugs will adversely affect his future eligibility for a security clearance.⁴⁸ After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the alcohol consumption, drug involvement, and psychological conditions security concerns. (See AG ¶¶ 2(a)(1) - 2(a)(9).)

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated and overcome the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant

⁴⁷ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

⁴⁸ While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant's alcohol and drug abstinence. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant's security clearance. See, e.g., ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

Subparagraph 2.d: For Applicant

Paragraph 3, Guideline I: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge