



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-10742

Appearances

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

08/13/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement, alcohol consumption, and personal conduct. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On March 23, 1999, Applicant applied for a security clearance and submitted a Security Clearance Application (SCA).¹ On June 7, 2011, he submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).² On unspecified dates, the Department of Defense (DOD) issued him three sets of interrogatories. He responded to the first set of interrogatories on September 26, 2012;³ the second set of interrogatories on November 16, 2012;⁴ and the

¹ GE 2 (SCA, dated March 23, 1999).

² GE 1 (SF 86, dated June 7, 2011).

³ GE 5 (Applicant's Answers to Interrogatories, dated September 26, 2012).

⁴ GE 3 (Applicant's Answers to Interrogatories, dated November 16, 2012).

third set of interrogatories on January 22, 2013.⁵ On March 21, 2013, the DOD issued a Statement of Reasons (SOR) to him, 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 H (Drug Involvement), G (Alcohol Consumption), and E (Personal Conduct), 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 April 2, 2013. In a sworn statement, dated April 17, 2013, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. He submitted a supplemental response on April 19, 2013. Department Counsel indicated the Government was prepared to proceed on May 29, 2013. The case was assigned to me on June 3, 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, 7 Government exhibits (GE 1 through GE 7) and 12 Applicant exhibits (AE A through AE L) were admitted into evidence without objection. Applicant and two other witnesses testified on his behalf. The transcript of the hearing (Tr.) was received on July 8, 2013. 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 drug involvement (¶¶ 1.a. through 1.g.), alcohol consumption (¶¶ 2.a. through 2.d.), and personal conduct (¶¶ 3.a. through 3.c.). 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 41-year-old employee of a defense contractor. He has been serving as an electrical system integration specialist with his current employer since September 1995.⁶ He was previously employed as a shipping clerk, computer test operator, cleanroom video technician, and window tinter.⁷ Applicant never served in the U.S. military.⁸ He was granted a secret security clearance in either 1989, 1995, or

⁵ GE 4 (Applicant's Answers to Interrogatories, dated January 22, 2013).

⁶ GE 2, *supra* note 1, at 32.

⁷ GE 2, *supra* note 1, at 33.

⁸ GE 1, *supra* note 2, at 11; Tr. at 63.

2002.⁹ He successfully completed his General Educational Development (GED) in 1990,¹⁰ and attended a course at a community college for about four months.¹¹ Applicant was married in December 1997,¹² and separated in January 2012.¹³ He and his wife have two daughters, born in 1998 and 2004.¹⁴

Drug Involvement and Alcohol Consumption

Applicant was a substance abuser whose substances of choice were alcohol and several illegal drugs, including marijuana; lysergic acid diethylamide (LSD), MDMA, known as ecstasy; and cocaine; as well as the prescription drug Xanax®.¹⁵ His use of drugs and alcohol resulted in three incidents involving the police and judicial authorities, as follows: driving under the influence (DUI), with a breathalyzer test result of 0.143, in 1990; possession of drug paraphernalia in 1996 (which was eventually *nolle prossed* upon Applicant's completion of a drug diversion program); and domestic violence (assault and reckless endangerment) in 2011 (which was *nolle prossed* when the victim failed to appear).¹⁶

In his own words, Applicant has been "cursed with the disease of addiction."¹⁷ He added, "I'm addicted to whatever numbs me, makes me feel good, lets me escape from reality."¹⁸ His true history of substance abuse is rather difficult to specify as he has repeatedly furnished differing versions over the years. He has admitted, and I find, that he has used the following substances with varying frequency during the periods indicated: marijuana, from the early 1990s until at least May 2012; Xanax®, from about 2005 to at least May 2012; cocaine, from about 1995 until about 2000; ecstasy, from about 1995 to about 1999; LSD, during the early 1990s;¹⁹ and alcohol, from about 1988

⁹ AE A (Statement, dated June 25, 2013), at 2; Tr. at 73; GE 5 (Personal Subject Interview, dated June 28, 2011), at 3. Applicant's responses to the question regarding his security clearance were inconsistent, with three different dates furnished by him.

¹⁰ GE 5, *supra* note 9, at 1.

¹¹ GE 2, *supra* note 1, at 31.

¹² GE 1, *supra* note 2, at 13.

¹³ Tr. at 56.

¹⁴ GE 1, *supra* note 2, at 16.

¹⁵ Applicant's Answer to the SOR, at 1.

¹⁶ Applicant's Answer to the SOR, *supra* note 1, at 2; GE 6 (Statement of Subject, dated June 10, 1999), at 2; GE 7 (Motion to Nolle Prose, dated September 26, 1997).

¹⁷ AE A, *supra* note 9, at 1. Applicant was raised in an environment and lifestyle where alcohol and drugs freely available, where his mother and her frequent husbands drank too much alcohol, and her husbands did drugs. See, AE E (Statement, dated June 19, 2013).

¹⁸ Tr. at 57.

¹⁹ Applicant's Answer to the SOR, *supra* note 1, at 1.

until June 2012.²⁰ Xanax® was prescribed for him to control his anxiety, and while Applicant admitted using it, he contends he did so by following the prescribed dosage and use. He denied ever abusing Xanax®, except by consuming alcohol at the same time,²¹ and there is no other evidence reflecting misuse of the prescription drug. During the periods that he used the illegal drugs, Applicant purchased cocaine²² and marijuana.²³ It is unclear how he obtained the other illegal substances. Applicant's wife also consumed alcohol and used marijuana and cocaine.²⁴

Applicant's abuse of alcohol and drugs resulted in several episodes of treatment, education, or aftercare. Following his 1990 alcohol-related arrest, Applicant complied with the court mandate that he attend a DUI program.²⁵ Following his 1996 drug-related arrest, he completed a court mandated drug diversion program.²⁶

On January 30, 2009, Applicant underwent a 14-day alcohol detoxification and treatment program, initially in the clinical decision unit (CDU), but subsequently in the outpatient partial hospitalization unit. Applicant emphasized his alcohol use, but concealed his abuse of drugs and other chemicals. He was treated by a team consisting of a doctor of medicine (M.D.) and a primary counselor who is a Marriage and Family Therapist (MFT). The discharge diagnoses were as follows: Axis I, alcohol dependence; panic disorder, with agoraphobia; and depressive disorder, not otherwise specified; Axis II, no diagnosis; Axis III, sprained ankle, per patient; Axis IV, severe; and Axis V, Global Assessment of Functioning (GAF) 40/60. There was no prognosis made. Applicant was discharged from the program on February 13, 2009, with recommendations to enroll in an intensive outpatient, continuing care program; attend 12-step meetings; obtain a sponsorship; and participate in individual therapy.²⁷

Three days after his discharge, on February 16, 2009, he was enrolled as an outpatient in the 24-day chemical dependency program of the same facility. Once again, Applicant emphasized his alcohol use and denied any other drug use. He was treated by a team consisting of an M.D. and a primary counselor who is an Internationally Certified Alcohol and Drug Counselor (ICADC). The discharge diagnoses were as follows: Axis I, alcohol dependence; sedative/hypnotic dependence; and depressive

²⁰ Tr. at 20. There were times when a coworker observed Applicant early in the morning while at work suffering from the effects of a hangover. See, Tr. at 37.

²¹ Tr. at 57-58.

²² Tr. at 59.

²³ Tr. at 68.

²⁴ Tr. at 61.

²⁵ GE 5, *supra* note 9, at 2; Applicant's Answer to the SOR, *supra* note 1, at 2.

²⁶ GE 5, *supra* note 9, at 2; Applicant's Answer to the SOR, *supra* note 1, at 1.

²⁷ GE 3 (Medical Records, various dates).

disorder, not otherwise specified; and panic disorder, with agoraphobia; Axis II, no diagnosis; Axis III, none; Axis IV, severe psychosocial stressors with family, peer group, and emotional problems; and Axis V, Global Assessment of Functioning (GAF) 50 at admission and 60 at discharge. There was no prognosis made. Applicant was discharged from the program on March 12, 2009, with recommendations to enroll in the continuing care program; attend three to five Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings per week; and make regular contact with his sponsor.²⁸

On June 17, 2012, Applicant underwent a 10-day alcohol treatment program in the outpatient partial hospitalization unit. He emphasized his alcohol use and admitted having tried marijuana on only one occasion. He was treated by a team consisting of an M.D. and a primary counselor who is an Associate Licensed Counselor (ALC), under the supervision of a licensed professional counselor (LPC). The discharge diagnoses were as follows: Axis I, alcohol (ETOH) dependence; chronic sedative-hypnotic use; and depression, not otherwise specified; Axis II, none; Axis III, a history of hypertension, among other issues, and recent concussion; Axis IV, stable, relating to primary group support issues; and Axis V, GAF 55. There was no prognosis made. Applicant was discharged from the program on June 27, 2012, with recommendations to enroll in an intensive outpatient, continuing care program; attend 12-step meetings; obtain a sponsor; and seek treatment for depression.²⁹

Three days after his discharge, on July 2, 2012, he was enrolled as an outpatient in the 38-day chemical dependency program of the same facility. He emphasized his alcohol use, but denied any other “significant drug use.” He was treated by a team consisting of an M.D. and a master’s level primary counselor. The discharge diagnoses were as follows: Axis I, alcohol dependence; chronic sedative/hypnotic use; cannabis abuse; and history of depression and anxiety, not otherwise specified; Axis II, no diagnosis; Axis III, essential hypertension; Axis IV, severe psychosocial stressors with relationships, marital, family, peer group, financial and emotional problems; and Axis V, GAF 50 at admission and 75 at discharge. There was no prognosis made. Applicant was discharged from the program on August 9, 2012, with recommendations to enroll in the continuing care program; attend three to five AA or NA meetings per week; maintain regular contact with his sponsor; and continue to follow up with his physician for medication management.³⁰

Since his discharge from the outpatient chemical dependency program, Applicant has routinely participated in the continuing care support group outpatient program.³¹ He also attends two or three AA meetings per week, and maintains regular contact with his sponsor, meeting with him on a weekly, and sometimes twice weekly, basis.³²

²⁸ GE 3, *supra* note 27.

²⁹ GE 3 (Medical Records, various dates).

³⁰ GE 3, *supra* note 27.

³¹ AE C (Letter, dated June 14, 2013).

³² Tr. at 42, 73.

According to Applicant's AA sponsor, Applicant has made it to the 4th step of the 12-step recovery program.³³ Of the hundred-plus people that the sponsor has worked with, only about five percent of those individuals make it to the 4th step.³⁴

Personal Conduct

Applicant's 1999 SCA contained the following question:³⁵

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

Applicant answered "no."³⁶ He certified that his entries were true, complete, and accurate to the best of his knowledge and belief and were made in good faith.³⁷ In reality, Applicant's response was false. He subsequently admitted that he deliberately failed to disclose that he had used any of the illegal drugs he eventually admitted having used, or was still using.³⁸ He explained that when the question arose, he felt fear because he wanted to keep his job and be able to obtain a clearance. He knew he was violating federal law when he lied, but he "didn't care."³⁹ He added that his addiction didn't give him very good judgment.⁴⁰

Applicant's 2011 SF 86 contained the following question:⁴¹

In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.), stimulants (amphetamines, speed, crystal methamphetamine, ecstasy, ketamine, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), steroids, inhalants (toluene, amyl nitrate, etc.) or prescription drugs (including painkillers)?

³³ Tr. at 45-47.

³⁴ Tr. at 47.

³⁵ GE 2, *supra* note 1, at 39, Question 27.

³⁶ GE 2, *supra* note 1, at 39.

³⁷ GE 2, *supra* note 1, at 42.

³⁸ Applicant's Answer to the SOR, *supra* note 1, at 1-2.

³⁹ Tr. at 61-62.

⁴⁰ Tr. at 62.

⁴¹ GE 1, *supra* note 2, at 21-22, Question 23.

Applicant answered “no.”⁴² He certified that his entries were true, complete, and correct to the best of his knowledge and belief and were made in good faith.⁴³ In reality, Applicant’s response was again false. He subsequently admitted that he deliberately failed to disclose that he had used any of the illegal drugs he eventually admitted having used, or was still using.⁴⁴ He explained that when the question arose, he was still fearful that he might lose his job, and especially his medical benefits for his autistic daughter, so he continued to lie about his substance abuse.⁴⁵

During his personal subject interview, conducted by an investigator from the U.S. Office of Personnel Management (OPM) in June 2011, Applicant denied ever using drugs of any kind or having any drug problems. He also professed to have no intention of ever using drugs in the future.⁴⁶ Applicant’s response was again false. He eventually admitted that he deliberately failed to disclose that he had used any illegal drugs he eventually admitted having used, or was still using.⁴⁷ Because he was still afraid about losing his job, he simply continued to lie about his substance abuse.

Applicant specifically admitted that he had used illegal drugs while possessing a security clearance.⁴⁸

Character References and Work Performance

Applicant’s work performance over an extensive period resulted in a number of company certificates of achievement, recognition, appreciation, and exceptional performance, as well as outstanding performance awards, and letters of appreciation.⁴⁹ Various coworkers, shop leads, program managers, and the union local lodge president, were very supportive of Applicant’s application to retain his security clearance, and were effusive with their praise for him. They noted Applicant’s work efforts, his integrity, honesty, trustworthiness, good character, and quality performance. They are all aware of his efforts to overcome his addictions, as well as his bad choices related to his falsifications and addictions.⁵⁰ Applicant’s estranged wife acknowledged that he is a dedicated father and hard worker.⁵¹

⁴² GE 1, *supra* note 2, at 22.

⁴³ GE 2, *supra* note 1, at 42.

⁴⁴ Applicant’s Answer to the SOR, *supra* note 1, at 1-2.

⁴⁵ Tr. at 19, 69-70.

⁴⁶ GE 5, *supra* note 9, at 2.

⁴⁷ Applicant’s Answer to the SOR, *supra* note 1, at 3.

⁴⁸ Applicant’s Answer to the SOR, *supra* note 1, at 2.

⁴⁹ AE B (Various Certificates and Letters, various dates).

⁵⁰ AE F (Character Reference, dated June 20, 2013); AE G (Character Reference, dated June 20, 2013); AE H (Character Reference, dated June 11, 2013); AE I (Character Reference, dated June 17, 2013); AE J (Character Reference, dated June 19, 2013); AE K (Character Reference, dated June 19, 2013); AE L (Character Reference, dated June 21, 2013); Tr. at 31, 34.

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.”⁵² 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.”⁵³

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 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.”⁵⁴ 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.⁵⁵

⁵¹ AE D (Character Reference, dated June 24, 2013).

⁵² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵⁴ “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).

⁵⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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."⁵⁶

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."⁵⁷ 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.

Analysis

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;

⁵⁶ *Egan*, 484 U.S. at 531

⁵⁷ See Exec. Or. 10865 § 7.

(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(g) may apply where there is *any illegal evaluation of drug use after being granted a security clearance*.

Applicant routinely purchased and used marijuana and cocaine, and also used LSD and ecstasy. He never sold, supplied, or manufactured, any of the drugs he used. He used illegal drugs while he held a security clearance. Applicant's abuse of drugs resulted in one arrest for possession of drug paraphernalia (although he denied the paraphernalia was his), and several substance abuse treatment or aftercare programs. Because Applicant lied to the healthcare providers throughout much of his earlier substance abuse treatment or aftercare programs, they focused on his alcohol abuse. Nevertheless, in 2012, he was diagnosed with chronic sedative/hypnotic use and cannabis abuse by a duly qualified medical professional. AG ¶¶ 25(a), 25(c), 25(d), and 25(g) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying condition 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.*

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(d) minimally applies. AG ¶¶ 26(a) and 26(b) do not apply. Applicant's abuse of marijuana, cocaine, ecstasy, and LSD, occurred over varying periods. The

marijuana abuse continued until at least mid-2012, only 15 months ago. His substance abuse was not motivated by peer pressure, but rather because it made him feel good, and enabled him to escape from reality. Applicant withheld significant substance abuse information from the staff at the various treatment and aftercare programs in which he was enrolled. Nevertheless, he was discharged from those programs in 1996 and 2009, only to experience repeated relapses. He failed to abstain until May 2012, and essentially failed to comply with all of the aftercare recommendations. Applicant completed the prescribed drug treatment programs in 2012, without any apparent recurrence of abuse to date. There is no evidence of any type of prognosis by a duly qualified medical professional. The record is also silent as to whether or not Applicant ever disassociated himself from his illegal drug co-users or suppliers.

It is too early to conclude that there is a cumulative success of his inpatient, outpatient, and aftercare treatment. Applicant had previously sworn off drugs, only to resume his use of them. He contends he has a new outlook regarding substance abuse, and is an active participant in AA. Applicant's most recent effort to demonstrate an intention not to abuse any drugs in the future, is unproven, until a more substantial period of abstinence is completed. Also, complete and clear disassociation from drug-using associates, and avoidance of the environment where the drugs were used, is warranted. Applicant's abstinence is viewed favorably, and he should be encouraged to continue it and his aftercare treatment. However, considering his earlier failures, Applicant's drug abuse or misuse may recur, and the uncertainty continues to cast doubt on Applicant's reliability, trustworthiness, or good judgment.

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). 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 two 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 and intoxication. AG ¶ 22(d) has been established by the repeated diagnoses of alcohol dependence made by qualified medical professionals. AG ¶ 22(f) has been established by Applicant's relapses and continued use of alcohol after completion of the various alcohol education and rehabilitation programs before 2012.

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(d) partially applies. AG ¶ 23(a) does not apply. For a number of years, Applicant simply ignored his alcohol problems because he was addicted to whatever numbed him, made him feel good, and let him escape from reality. He consumed alcohol frequently, and it resulted in his attendance at several alcohol-related treatment, education, and aftercare programs. Although he completed those programs, before 2012, he routinely relapsed back into his earlier pattern of alcohol consumption. But something apparently changed after Applicant and his wife separated and he completed his most recent alcohol treatment programs. In June 2012, Applicant decided that alcohol was bad for him. He has apparently been abstinent since then. He resumed his attendance at AA meetings and routinely meets or speaks with his sponsor. There is no evidence of any type of prognosis by a duly qualified medical professional.

As it was with Applicant's drug problems, so it is with his alcohol dependence. It is too early to conclude that there is a cumulative success of his inpatient, outpatient, and aftercare treatment. Applicant had previously sworn off alcohol, only to resume his use of it. He contends he has a new outlook regarding alcohol, and is an active participant in AA. Applicant's most recent effort to demonstrate an intention not to consume any alcohol in the future is unproven, until a more substantial period of abstinence is completed. Applicant's abstinence is viewed favorably, and he should be

encouraged to continue it and his aftercare treatment. However, considering his earlier failures, Applicant's alcohol dependence may recur, and the uncertainty continues to cast doubt on Applicant's reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in 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.

The guideline notes conditions that could raise security concerns. Under AG ¶ 16(a), security concerns may be raised when there is a:

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Under AG ¶ 16(b), security concerns may be raised by:

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

AG ¶ 16(e) may apply where there is:

personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

Applicant's responses to the SCA and SF 86 inquiries and to the questions of the OPM investigator were false and concealed the full scope of Applicant's substance abuse and treatment history. He was diagnosed and treated for alcohol dependence and sedative/hypnotic dependence; he routinely failed to comply with recommended aftercare; and he used illegal drugs while possessing a security clearance. AG ¶¶ 16(a), 16(b), and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if *the individual made*

prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. If 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, AG ¶ 17(c) may apply. As to Applicant's responses to the SCA and SF 86 inquiries and to the questions of the OPM investigator, he deliberately failed to disclose that he had used any of the illegal drugs he eventually admitted having used, or was still using. He was afraid because he wanted to keep his job and be able to obtain a clearance. He knew he was violating federal law when he lied, but he "didn't care." AG ¶¶ 17(a) and 17(c) do not apply.

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 H, G, and E, in my analysis below.

There is some evidence in favor of mitigating Applicant's conduct. Applicant's illegal drug abuse and dependence supposedly ceased in May 2012, and his alcohol consumption ceased in June 2012. He has purportedly been abstinent since those times. He has been with his current employer since September 1995. He is an outstanding worker, as well as a loving and caring father.

The disqualifying evidence under the whole-person concept is more substantial. Applicant routinely purchased and used marijuana and cocaine, and also used LSD and ecstasy. He used illegal drugs while he held a security clearance. Applicant's abuse of drugs and alcohol resulted in three arrests, and several substance abuse treatment or aftercare programs. He routinely and intentionally lied to the healthcare providers throughout much of his earlier substance abuse treatment or aftercare programs; on his SCA in 1999; on his SF 86 in 2011; and to the OPM investigator in 2011. He knew he was violating federal law when he lied, but he "didn't care." Applicant was diagnosed with alcohol dependence, chronic sedative/hypnotic use, and cannabis abuse by a duly

qualified medical professional. Despite completing a DUI program following his 1990 arrest; a drug diversion program following his 1996 arrest; and various substance abuse treatment programs in 2009, he resumed his abuse of alcohol and illegal drugs. Applicant's actions over such a lengthy period, as well as his changing stories, indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations.

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.⁵⁸ Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has failed to mitigate the drug involvement, alcohol consumption, and personal conduct 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 failed to mitigate or overcome the Government's case. For the reasons stated, I conclude he is not 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 H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant

⁵⁸ 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).

Paragraph 3, Guideline E:

AGAINST APPLICANT

Subparagraph 3.a:

Against Applicant

Subparagraph 3.b:

Against Applicant

Subparagraph 3.c:

Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge