



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



In the matter of:)	
)	
)	ISCR Case No. 12-02791
)	
Applicant for Security Clearance)	

Appearances

For Government: Carolyn Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), Applicant's response, and the exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for alcohol consumption, drug involvement, and criminal activity. His request for a security clearance is denied.

Statement of the Case

On November 20, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guidelines G (alcohol consumption), H (drug involvement), and J (criminal conduct). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his December 6, 2013 Answer to the SOR, Applicant admitted 18 allegations, and denied two: ¶ 1.d under Guideline G, and ¶ 2.a under Guideline H. He also requested a decision based on the written record in lieu of a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a FORM dated February 24, 2014. It

contained 19 exhibits. (Items 1-19) On March 7, 2014, Applicant received the Government's FORM, and was given 30 days to submit material to refute, extenuate, or mitigate the security concerns. Applicant timely submitted a response dated March 31, 2014. (Item 20) Department Counsel did not object to Applicant's submission. (Item 21) The case was assigned to me on April 9, 2014, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions are incorporated as findings of fact. I make the following additional findings of fact.

Applicant, 44 years old, married in 1996 and separated in 2011. He has two children, 8 and 11 years of age. He received a bachelor's degree in systems engineering in 1992 and a master's degree in information systems in 2011. He began his current position with a defense contractor in 2011. This is his first application for a security clearance. (Item 5)

At his security interview in December 2011, Applicant described his alcohol usage. From about 1987, when he was 17, he used alcohol to the point of intoxication approximately monthly. In college, between 1988 and 1992, he became intoxicated about weekly. After arrests for DUI in 1996 and 2006, he stopped using alcohol for several months, but later resumed his use. In his December 2013 Answer to the SOR, Applicant said his drinking stemmed from stress in his marriage. In his December 2011 affidavit, he stated that, other than counseling he began in December 2012, his numerous treatments for substance abuse were at his wife's urging. Applicant used alcohol along with the prescription drug, Ambien.¹ He was prescribed the drug in 2006 following a surgery, and again in 2009 to regulate his sleep cycles. He felt Ambien by itself "barely worked." and he "continued to find myself constantly turning to alcohol in order to reach a physical state in which I could sleep." He stated in a petition to a court concerning his probation, "In all of my DUIs, I consumed alcohol after taking prescribed Ambien for sleep issues." (Items 1, 4, 5, 7, 8, 17)

Over the years, Applicant has been treated for alcohol and sedative abuse. His history of criminal conduct, arrests, and treatment follows.

1989 (allegation 1.n) – Applicant's first alcohol-related arrest, on a charge of being drunk in public, occurred when he was 19 years old. He noted in his security clearance application that he was fined. The file contains no evidence of a court appearance. (Items 4, 5, 7, 8)

¹ Ambien is a Schedule IV drug, which is defined under the Controlled Substances Act as a drug with a low potential for abuse and low risk of dependence. It is available by prescription. See 21 U.S.C. §812(b)(4); and "Drug Schedules" at <http://www.justice.gov/dea/druginfo/ds.shtm>.

1996 (allegation 1.m) – When he was 26 years old, Applicant drank alcohol at a bar with friends and then drove his car. He was arrested and held overnight on a charge of driving under the influence of alcohol (DUI). He pled guilty and paid a fine, court costs, and fees. (Item 8)

December 20, 2006² (allegation 1.l) – Applicant drank alcohol at home, along with Ambien, and then drove to a store. He hit a tree or telephone pole, and injured his head. He was arrested, and later pled guilty to DUI and careless driving, and lesser charges were dropped. On December 18, 2007, he was sentenced and court-ordered to undergo an alcohol evaluation and random blood alcohol tests, attend alcohol education, receive 86 hours of therapy, perform 60 hours of community service, and serve 20 days of home detention and electronic surveillance. He paid \$1,100 in court costs and fees. He was also placed on supervised probation for 15 months. (Items 4, 5, 8, 16, 17)

Treatment Centers A; B - Applicant attended an educational course and outpatient group therapy from 2007 to 2009 at Treatment Center A (allegation 1.k). During treatment, he tested positive for alcohol in November 2008, and was prescribed the drug Antabuse. He also received outpatient treatment from October to November 2010 at Treatment Center B (allegation 1.j). He admits in his Answer to the SOR that he was using alcohol as well as Ambien at the time, and that the combination caused him to "make exceptionally poor decisions." A letter from a clinical psychologist (Psy.D) at Treatment Center B noted that Applicant " . . . was admitted to our Intensive Outpatient Program on 10/23/2010. He was admitted under admitting diagnosis of alcohol dependency and sedative abuse." (Items 1, 4, 7, 8, 12 at 4) In a summary of Applicant's treatment at the time, the psychologist stated,

Based on his poor compliance with group, [Applicant's] treatment plan was revamped for individual sessions. [Applicant] noted that he was no longer willing to keep his abstinence agreement which is required as part of our primary IOP [intensive outpatient program] program and wished to continue to experiment with moderation management drinking. (Item 12)

January 15, 2011 (allegation 1.i) – Applicant consumed about four alcoholic beverages. According to his Answer, he was also using Ambien with the alcohol. While

² Applicant mistakenly listed this arrest as December 2007 in his security clearance application. (Item 8) In addition, Applicant's Federal Bureau of Investigation (FBI) arrest record shows an arrest on March 20, 2007 on a charge of Driving under the Influence of Liquor, but provides no further information. (Item 6 at 5) An arrest on that date is not alleged in the SOR. I will not consider it in reaching my conclusions because conduct not alleged in an SOR may be considered only for limited purposes, including: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3. *Id.*; ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003).

driving to the store, he slid on ice and went off the road. He was arrested and charged with DUI, careless driving, and two lesser charges. While being held in jail overnight, he destroyed property, and a charge of criminal injury to property was added (allegation 3.d). He pled guilty to DUI, and lesser charges were dismissed. On September 20, 2011, he was court-ordered to have an alcohol evaluation, attend alcohol education, receive 86 hours of therapy, and to continue attending 12-step meetings. His sentence of 365 days incarceration was suspended, but he was required to spend 60 days in work release, working during the day and spending nights and weekends in jail. He was fined \$1,384, which included a "Persistent Drunk Driving" charge of \$100. He was sentenced to two years' supervised probation. Applicant received court-ordered alcohol treatment from February 7 to February 25, 2011 at Treatment Center B (allegation 1.h). (Items 4-8, 12, 13, 15, 17, 19)

February 27, 2011 (allegation 1.g) – Applicant consumed five drinks at home. He drove to a store, and hit two parked cars. He kept driving and hit another parked car and a fence. He was arrested and spent the night in a hospital for detoxification. According to his March 2011 report from Treatment Center C, Applicant had also used Ambien before driving. (Item 13 at 25) In September 2011, he was charged with DUI, leaving the scene of an accident, failure to report an accident, and resisting arrest. He pled guilty to DUI and the remaining charges were dismissed. He was sentenced to attend alcohol evaluation, alcohol education, Alcoholics Anonymous (AA) meetings, 86 hours of therapy, 48 hours of community service, 365 days incarceration (355 suspended), and 10 days' work release. He paid approximately \$2,884 in court fees and costs. The state department of motor vehicles revoked Applicant's driving privilege. Reinstatement required installation of an ignition interlock (II) device on any car he planned to drive. The II device was required until March 2017 (allegation 3.c). His three years' supervised probation, with random sobriety monitoring, was allowed to run concurrently with the probation for his January 2011 conviction. At his security interview, he stated he attended AA meetings weekly. His current probation ends in September 2014. (Items 4-8, 13, 14, 17, 18, 20)

Treatment Center C - On February 28, 2011, Applicant began his court-ordered inpatient treatment at Treatment Center C.³ (allegation 1.f) He stated at his December 2011 security interview that he was diagnosed as an alcohol abuser during this treatment. (Item 8 at 5) However, in his Answer to the SOR, he admitted that he was diagnosed as alcohol dependent at Treatment Center C. A certified addiction counselor, level III (CAC III) at Treatment Center C diagnosed Applicant on Axis I as alcohol dependent. (Item 13 at 2) The counselor's report notes that Applicant ". . . also did a lot of experimenting with other mind altering chemicals in his past." (Item 13 at 2) When Applicant completed the in-patient treatment on March 29, 2011, the CAC noted that Applicant ". . . appears to be minimizing the affects [sic] his drinking has had on his

³ Applicant stated during his security interview that his attendance at this February 2011 in-patient treatment was voluntary. He was provided with an opportunity to review and correct the report of his security interview. Although he corrected some information, he did not correct the statement that this treatment was voluntary. (Item 8 at 7)

life and those around him.” She also noted, “[Applicant] meets the diagnostic criteria for Alcohol Dependency 303.90 due to his repeatedly increased use over the past several years despite the negative consequence in his life.” (Item 13 at 25, 26)

Treatment Center B (allegation 1.e) – Applicant returned to the intensive outpatient treatment at Treatment Center B on April 1, 2011, with a diagnosis of alcohol dependence and sedative abuse. He continued this treatment until June 17, 2011. The center’s clinical psychologist commented that, when Applicant was discharged in June 2011, he “. . . rapidly distanced himself from being engaged with his ongoing care program. He stopped coming to Aftercare and stopped individual counseling.” (Items 4, 5, 7, 8, 12 at 4, 13)

Treatment Center D (allegation 1.d) – From August to December 2011, Applicant received court-ordered outpatient treatment at Treatment Center D. He denies that he was diagnosed with alcohol dependence and marijuana abuse during this treatment. He stated in his Answer that he contacted the facility and was informed that he was not formally evaluated or diagnosed for substance abuse. Applicant’s admission worksheet from the facility shows alcohol “use” and marijuana “use.” For each substance, the option of “dependence” was available, but not selected. These descriptions were listed as “clinician’s diagnostic impression” rather than formal diagnoses. The remainder of the counseling record contains no indication that Applicant was formally diagnosed as dependent on either substance at this facility. (Items 4, 11)

In February 2013, Applicant petitioned the court that sentenced him following the February 2011 conviction. He asked that his supervised probation, ordered on September 2011, be converted to unsupervised probation, based on his having met the conditions ordered by the court. He also stated that, “The counseling and education confirm that my problem drug is Ambien, rather than alcohol.” Applicant’s probation officer and probation supervisor objected to converting his probation to unsupervised. His probation officer noted that Applicant continued to use alcohol during his probation, and he reported to the probation department on two occasions under the influence of alcohol. In one of these instances, in December 2012, he had a positive breathalyzer result. He was referred to Treatment Center A for Relapse Prevention (allegation 1.b). On April 17, 2013, the court denied Applicant’s request for unsupervised probation. (Items 9, 14, 17)

Treatment Center A (allegation 1.c) – In June 2013, Applicant met with an agent of the Office of Personnel Management (OPM) and hand-wrote and signed a statement regarding his alcohol history. He wrote that in February 2012, he attended outpatient treatment at Treatment Center A. He attended weekly individual counseling from December 2012 to April 2013, and then every other week. (Item 5 at 7) In June 2013, Applicant wrote,

This counseling w/[Treatment Center A] is the first counseling that has been 100 percent my decision. The prior counseling was at the urging of my wife [name]. Because this counseling was my idea alone I feel it has been the most beneficial [sic]. . . . I only had a [sic] abuse problem from 6/2010 to 2/2011. During this time I felt trapped within my marriage [sic] and I was lying to myself and my wife about the marriage [sic]. . . . With [counselor's] help I have learned to be honest with myself. We have extensively worked on future prevention. I have made changes within my life and have accepted my pending divorce. (Items 4, 5, 7, 10)

Applicant also discussed his Ambien use while at Treatment Center A. According to his counselor, Applicant stated he “. . . realized he was truly abusing and dependent upon the Ambien He can now say with confidence that he was dependent of [sic] Ambien and his use of alcohol exacerbated the problems and poor decision making.” (Item 10 at 12)

Applicant's counselor at Treatment Center A, a CAC III, confirmed that Applicant attended weekly counseling with her from December 2012, and as of December 2013, was attending monthly counseling. He planned to attend every other month starting January 2014, and then to transition out of counseling. Applicant did not attach formal treatment documentation from the counselor such as an alcohol evaluation or diagnosis. In a December 2013 letter, she reported,

[Applicant] has sustained sobriety from alcohol for just over a year. His last reported use was December 2, 2012. [Applicant] has also stopped his use of prescription Ambien, which lead [sic] to both personal and legal problems for him in the past. Based on his information disclosed in session and demonstrated behaviors, [Applicant] has the knowledge and tools to sustain a sober and balanced lifestyle in the future. (Item 4)

In his December 2013 Answer to the SOR, Applicant said his last use of alcohol was December 2, 2012. This instance occurred when he reported to his probation officer while under the influence of alcohol, as described previously. However, Applicant stated, in his March 2014 Response to the Government's FORM, that he has “. . . not abused any substance in any way since February 2011.” (Items 4, 20)

In June 2013, Applicant retained a psychologist⁴ to perform a psychological and substance abuse evaluation. The psychologist noted that Applicant was “self-referred.” His report does not indicate that he reviewed Applicant's treatment records and history, and it appears that he obtained information on Applicant's past alcohol history from Applicant.

⁴ The credentials of the professional that Applicant consulted are unclear. His signature is followed by the words “clinical psychologist.” However, after his name, he ascribed the letters “Th.D,” which indicate the title of doctor of theology. (Item 20)

In his report, the psychologist noted, “[Applicant] is currently on a three-year probation plan with random sobriety monitoring in conjunction with being convicted of a fourth drinking-driving offense on September 20, 2011.”⁵ (Item 20) The psychologist found:

Results obtained on the Adult Substance Use Survey provide a profile that scores in high moderate ranges for use/abuse and life disruptions related to alcohol consumption Problem episodes (3 - 4) related to the use of alcohol and ambien medications together for sleep disruption problems precipitating confusion, memory lapses, and passing out are reported. Motivation to eliminate these alcohol related behaviors and problems scores in high ranges. (Item 20 at 2)

The psychologist diagnosed Applicant with Alcohol Abuse (in present remission) on Axis I. He recommended that Applicant maintain an “alcohol-free lifestyle” and continue the random sobriety monitoring required by his probation “to insure probation compliance and support relapse prevention strategies.” He also commented that Applicant

. . . presents at this time as positively and appropriately motivated to continue pursuit and achievement of these goals. Prognosis for continued progress is satisfactory with continued relapse prevention effort. (Item 20 at 3)

Applicant has had no alcohol-related arrests since 2011. He stated in his Response,

I have made, and continue to make, the admission that I abused alcohol in the past. However, I have taken visible and direct actions to address this issue and, by making life changes, I have reached a point where alcohol use is no longer, nor will be a part of my life. (Item 20)

He stated he is attending treatment and it “. . . has been a game changer in my life.” He stated he is not in denial of his abuse, and as a result of therapy, he has been addressing the issues that led to his substance abuse. As of March 2014, he had attended 30 therapy sessions and described himself as fully committed to sobriety and continuing counseling. (Item 20)

⁵ The record contains no other reference to an alcohol-related offense in September 2011, and it is not alleged in the SOR.

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and policy in the AG.⁶ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines G, H, and J.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government must produce admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access to classified information enters a fiduciary relationship with the Government based on trust. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁹

Analysis

Guideline G (Alcohol Consumption)

AG ¶ 21 expresses the following security concern about 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.

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; AG ¶ 2(b).

I have considered the disqualifying conditions under AG ¶ 22, and find that the following apply:

- (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;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Applicant began consuming alcohol to the point of intoxication when he was a teenager. He has had five alcohol-related arrests since 1989, including four DUIs. He has shown poor judgment by his decisions to drive after drinking alcohol, to combine Ambien and alcohol, and to destroy property while incarcerated. He has been diagnosed by a psychologist and a certified addiction counselor as alcohol dependent. Applicant has attended alcohol treatment numerous times starting in 2007. He resumed drinking alcohol after completing a treatment program and after being diagnosed as alcohol dependent in 2010 and 2011. AG ¶¶ 22(a), (c), (d), and (f) apply.

I have considered the following mitigating factors under 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;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser); and
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar

organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's excessive drinking did not occur in unusual circumstances but at home or with friends. His past decisions to drive after consuming more than the legal limit of alcohol demonstrate poor judgment and lack of reliability. He was arrested and pled guilty to driving under the influence of alcohol in 1996, 2006, and twice in 2011, the last two incidents occurring only six weeks apart. Applicant's arrests in 1996 and 2006 are not recent. However, in spite of these past DUI arrests, and alcohol treatment, Applicant continued to drink to intoxication. His 2011 arrests occurred within the past three years. His most recent alcohol incident, when he reported to his probation officer while under the influence of alcohol, occurred only 16 months ago. Given Applicant's history of repeatedly returning to alcohol use, even after many periods of alcohol treatment, I cannot confidently conclude that such events will not recur in the future. AG ¶ 23(a) does not apply.

Comments by several of Applicant's alcohol counselors indicate that, in the past, he was not willing to admit his alcohol addiction and maintain abstinence. Between 1996 and 2011, he did not establish a pattern of abstinence. At the end of his 2010 treatment, after a diagnosis of alcohol dependence, he decided to continue to use alcohol. He had a DUI within in less than three months. After again attending treatment, which ended on February 25, 2011, he was arrested on a DUI charge two days later. A psychologist noted that after his June 2011 treatment, Applicant distanced himself from it as soon as his treatment ended and did not continue with aftercare. As recently as June 2013, Applicant stated he had only an alcohol abuse problem, and that it existed only from June 2010 to February 2011. He also stated that his problem drug is Ambien, not alcohol.

Applicant states that he is now committed to sobriety. He obtained an evaluation from a psychologist in 2013, who diagnosed him with alcohol abuse, in remission. He stated, "Prognosis for continued progress is satisfactory with continued relapse prevention effort." There is no indication in the report that the psychologist reviewed Applicant's records from past treatments. It appears that the psychologist had not worked with Applicant previously, and relied on Applicant's description of his alcohol-related history.

Applicant also notes that he is currently in counseling. However, there is no indication that he is attending Alcoholics Anonymous or a similar organization. Moreover, Applicant's statement within the past year that his "problem drug" was not alcohol, but Ambien, despite diagnoses of alcohol dependence, raises questions about his understanding of his history and use of alcohol. Only limited mitigation is available under AG ¶¶ 23(b) and (d).

Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern about drug involvement:

Use of an illegal drug or misuse of a prescription drug¹⁰ 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.

I considered the following disqualifying conditions listed at AG ¶ 25:

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

Applicant admits to using marijuana twice in 2009, which is infrequent, and not recent. The record does not indicate he was diagnosed with marijuana abuse or dependence. I find that it is unlikely to recur. However, he has a history of combining the prescription medication Ambien with alcohol. On at least three occasions, this combination led to Applicant's driving while intoxicated. His Ambien usage resulted in a diagnosis of sedative abuse at Treatment Center B in October 2010 and in April 2011. AG ¶¶ 25(a) and (d) apply.

The following mitigating conditions are relevant under 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;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:

¹⁰ (a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24)

(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; and

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

Applicant was prescribed Ambien to treat sleep problems, and the last use of Ambien occurred, according to the record evidence, in February 2011, on the date of his last DUI arrest. Applicant stated that his counselor does not find him to be dependent on Ambien. His abuse is not recent, and it appears it has ended. AG ¶ 26(c) applies.

Applicant improperly combined a prescription drug with alcohol, which led him on three occasions to violate the law by driving while intoxicated. His conduct raises doubt about his trustworthiness and judgment. He states he has not used Ambien since 2011. However, Applicant is on probation; his alcohol abstinence is enforced through random sobriety monitoring. When Applicant's probation ends in a few months, it is unknown if he will return to alcohol use, as he has in the past, and to the combination of alcohol and Ambien. AG ¶ 26(a) does not apply. Applicant's abstinence from Ambien is a positive sign of rehabilitation, and merits some mitigation under AG ¶ 26(b)(3). However, I cannot confidently conclude that he will not use this mixture in the future, when his sobriety is no longer monitored.

Guideline J, Criminal Conduct

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

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying:

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

(d) individual is currently on parole or probation.

Applicant was arrested, charged, and pled guilty to DUI, a criminal offense, in 1996, 2006, and twice in 2011. He was sentenced to serve probation in three of these cases. He was required to install an II device on any car he drives. Following a DUI arrest, and while incarcerated, he was also charged with destruction of property. He is currently on supervised probation, which requires random sobriety monitoring. It will expire in September 2014. AG ¶¶ 3 (a) and (d) apply.

AG ¶ 32 provides conditions that could mitigate security concerns:

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

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) is essentially the same as AG ¶ 23(a) under Guideline G, and for the reasons discussed previously, it does not apply in mitigation. AG ¶ 32(b) is also not applicable, because the record contains no evidence that Applicant was forced to commit the DUI offenses to which he pled guilty. He stated that his stressful marriage led him to abuse alcohol, and he is now divorced. However, Applicant was becoming intoxicated weekly while he was in college, between 1988 and 1992, years before he married. The 1989 alcohol-related arrest occurred before his marriage, and the 1996 DUI conviction occurred the month of his marriage, likely before marital discord could have caused his excess alcohol use. As to mitigation under AG ¶ 32(d), the record contains no information on Applicant's community involvement, or his employment record. Some mitigation is available based on rehabilitation, because Applicant is in counseling and has been sober during the past year. However, his sobriety is enforced by the random sobriety monitoring required by his probation. Limited mitigation is available under AG ¶ 32(d).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a mature, educated adult, 44 years of age, with a long history of abusing alcohol. His alcohol consumption over the past 25 years has led him to engage in criminal conduct. Between the ages of 19 and 41, he was charged with five alcohol-related offenses. Four of them were DUI offenses that put his own life and the lives of others at risk. It is unclear from the record if he had two additional DUI arrests, in 2007 and September 2011, which are not alleged. He has been fined, sentenced to attend alcohol education classes, court-ordered to undergo alcohol evaluations and alcohol treatment. Three sentences required probation, and he is currently serving supervised probation that will not end until September 2014. Applicant's willingness to violate the law presents a security concern.

Applicant has been in alcohol treatment intermittently since about 2007, but he has continued to consume alcohol, often combined with Ambien. He was diagnosed with alcohol dependence and sedative abuse. It appears he was not committed in the past to overcoming his problem. He has been in counseling and abstinent since December 2012, and he states he is committed to sobriety, which is a positive sign of rehabilitation. However, he has tried to abstain in the past, but failed. His current 16 months without alcohol is a considerably shorter time span than the years he has been drinking. Moreover, his sobriety is enforced through random alcohol monitoring required by his probation. Applicant has resumed alcohol use in the past after abstaining, and it is unknown whether he will remain abstinent after his current probation and random monitoring end.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised about his suitability for a security clearance. Such doubts must be resolved in favor of the national security.

Formal Findings

Paragraph 1, Guideline G	AGAINST APPLICANT
Subparagraphs 1.a – 1.c	Against Applicant
Subparagraph 1.d	For Applicant
Subparagraphs 1.e – 1.n	Against Applicant
Paragraph 2, Guideline H	AGAINST APPLICANT
Subparagraphs 2.a – 2.b	Against Applicant
Paragraph 3, Guideline J	AGAINST APPLICANT
Subparagraphs 3.a – 3.d	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge