DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 12-02853
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: Warren S. Heller, Esq.

02/11/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

After his second driving while impaired offense, Applicant received inpatient detoxification treatment and had aftercare counseling for diagnosed alcohol dependence. The alcohol consumption concerns are mitigated by his abstention from alcohol since July 2011 with no intent to drink alcohol in the future. The drug involvement and personal conduct concerns because of alleged marijuana abuse while holding a security clearance were not established. Clearance is granted.

Statement of the Case

On April 25, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct), and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense

(DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR allegations on May 23, 2014, and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The Government provided discovery to Applicant by letter dated July 30, 2014. On October 2, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 3, 2014, I scheduled a hearing for October 22, 2014.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and three Applicant exhibits (AEs A-C) were admitted into evidence without any objections. Applicant testified, as reflected in a transcript (Tr.) received on November 6, 2014.

Procedural Rulings

Before the introduction of any evidence, the Government moved to correct two typographical errors in the SOR. The motion was granted without any objections. SOR 1.a was amended to correct the date of Applicant's arrest from May 21, 2011 to May 24, 2011. SOR 2.b was amended to allege that Applicant used marijuana, as set forth in 2.a.

Summary of SOR Allegations

The SOR alleges under Guideline G that Applicant was convicted of a January 2005 driving while impaired offense (SOR 1.a) and of a May 2011 (SOR 1.c) driving while impaired, second offense;[1] that he was placed on probation from January 2012 to January 2014 for the May 2011 offense (SOR 1.a); and that he received inpatient treatment for diagnosed alcohol addiction in July 2011 (SOR 1.b). Under Guideline H (SOR 2.a and 2.b) and under Guideline E (SOR 3.a), Applicant is alleged to have used marijuana in July 2011 after being granted a DOD security clearance around 2008.

When he answered the SOR, Applicant admitted that he had been arrested and charged with first offenses of driving while impaired in state X in January 2005 and in state Y in May 2011, but he denied that he had been convicted. For the January 2005 offense, he admitted to sufficient facts and his case was continued without a finding for one year. For the May 2011 offense, he was sentenced to probation before judgment. On completion of his probation on January 6, 2014, the charge was dismissed. Applicant admitted that he received inpatient treatment for diagnosed alcohol addiction for six days in July 2011 on legal advice to be eligible for probation before judgment. However, he explained that he "grossly exaggerated the level and extent" of his drinking, and he indicated falsely that he

[1] The SOR alleges that Applicant was charged with driving while impaired, second offense, in May 2011. The evidence shows that while it was Applicant's second arrest for that type of alcohol offense, it was in a different state (state Y) from his first offense (in state X). He was charged with driving while impaired and not driving while impaired, second offense.

had smoked marijuana the previous week. Applicant denied smoking any marijuana during his more than 30 years of employment with a defense contractor.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 56-year-old principal technical support engineer. He has worked for his defense contractor employer from June 1978 to January 2000 and from January 2004 to present. Applicant started as an hourly employee and was promoted over the years to positions of increasing importance. Of those engineers in his section at the same pay scale, Applicant is the only one without a college degree. He worked for a computer data storage company as an engineer from June 1978 to January 2000. (GE 1; Tr. 23-25.) Applicant holds a DOD secret-level security clearance, which was originally granted to him in 1978 and renewed most recently in June 2004. (GEs 1, 2.)

Applicant and his ex-wife divorced in 2009 after 15 years of marriage. They separated around 2007, and Applicant went to live with his brother. (Tr. 47.) Applicant pays $500 a week in child support for his adopted daughter, who is now 17 years old and attends her local school with the benefit of an individual education plan. He also pays $200 a week in alimony to his ex-wife, who is unemployed due to her disability. (GEs 1-3; Tr. 26-30, 34.)

Applicant started drinking alcohol when he was in his early 20s. Applicant and his ex-wife had marital problems on and off starting in 2001, and he abused alcohol on occasion to alleviate stress. (Tr. 29-30.) Applicant's alcohol consumption caused him no legal difficulties until late January 2005 when he drank alcohol at a concert. He stopped on the roadside on the way home in state X and fell asleep in his vehicle. A local police officer arrested him for driving while impaired. Applicant admitted to sufficient facts and his case was continued without a finding for one year. He was placed on one year of probation and ordered to attend a driver's education program for first offenders. His driver's license was suspended for 45 days. Applicant completed the driver's education program, and in March 2006, the case was dismissed. (GEs 1, 2.)

Applicant continued to drink usually beer and whiskey at home or in bars, primarily by himself on weekends. (GE 2; Tr. 32.) He drank partially to alleviate painful symptoms from an illness that plagued him for years. (Tr. 32.) In May 2011, Applicant drank alcohol, reportedly three or four beers with dinner, while on a business trip in state Y for his employer. He was stopped while crossing a bridge and then administered a field sobriety test, which he failed. Applicant was arrested for driving under the influence, driving while impaired, and speeding, and taken into custody. After five hours, Applicant was released on a promise to appear in court in November 2011. (GEs 1, 2; Tr. 36-37, 63.)

Applicant retained an attorney who specialized in drunk-driving cases. At the insistence of his attorney, Applicant voluntarily admitted himself for inpatient detoxification

treatment on July 18, 2011. According to the admission records, Applicant reported drinking six or more shots of whiskey per day and two to three beers occasionally; that he arrived late to work because of drinking two or three times monthly; and that he worked with a hangover three or four times monthly. He reported that he drank six shots of whiskey and two to three beers the evening preceding his admission. He also related that his father had recently expressed concerns about his drinking. Concerning abuse of any other substances, Applicant reportedly "endorsed smoking marijuana last Friday but no prior use." (GE 3.) Applicant now asserts that based on his reported drinking alcohol to intoxication once a month and occasional drinking at other times,[2] he was told that he was not a good candidate for admission. He was left with the impression that he would be eligible for admission if his alcohol problem was more severe. So, he then exaggerated the frequency and quantity of his drinking and also reported a single use of marijuana that never occurred. (Tr. 30-31, 38-42.) He was focused on the possible consequences to his driver's license and his employment if he did not obtain treatment. (Tr. 53.) Applicant was given a provisional diagnosis of alcohol dependence. At discharge on July 23, 2011, Applicant was diagnosed by a staff physician with alcohol addiction, slightly improved. Aftercare plans consisted of an intensive outpatient program. (GE 3; Tr. 42-43.)

On July 25, 2011, Applicant was evaluated for the intensive outpatient program. His initial urine toxicology screen was positive for benzodiazepine because of the medication he had received during his inpatient detoxification, but other screens (one urinalysis and two breathalyzers) later administered were negative. For the first two weeks, Applicant attended the program four days a week. He then attended 12 weekly sessions of individual therapy with the program's director before being moved to a weekly early recovery group. (GE 2; Tr. 43.) At the recommendation of his counselor in the outpatient program, Applicant also attended Alcoholics Anonymous (AA), initially twice a week. Applicant's brother attended AA, and Applicant went with him on occasion. (Tr. 44.)

On or before July 27, 2011, Applicant self-reported to his security office at work that he had been arrested in May 2011 for driving under the influence of alcohol and that his trial date was pending.[3] (GE 4.) On August 25, 2011, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). Applicant disclosed that he had been arrested for driving under the influence in February 2005 [sic] in state X and in May 2011 in state Y. He added that he had a pending court date for November 2011 on the charge, and on the advice of his attorney, he successfully completed an inpatient evaluation in July 2011 and was attending an intensive outpatient program. Applicant responded "No" to inquiries concerning whether he had illegally used any controlled substance in the last seven years and whether he had ever illegally used a controlled substance while possessing a security clearance. (GE 1.)

[2] When asked on cross-examination about his drinking habit at that time, Applicant indicated that he drank a few beers every other day and to intoxication once a month. (Tr. 50-51.) In response to later inquiry, he testified that it took eight alcohol drinks for him to feel impaired enough where he knew he could not safely drive. (Tr. 63-64.)

[3] Applicant testified that to his recollection, he notified his employer about his arrest "probably a month" before he retained his attorney in late June 2011. (Tr. 65-66.)

On September 28, 2011, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) partially about his alcohol-related offenses and treatment. Applicant told the investigator that he had consumed three beers with dinner while on a business trip in state Y before his May 2011 arrest. Applicant had a court date scheduled for November 2, 2011. About his arrest in 2005 in state X, Applicant related that he could not recall the amount of alcohol he consumed. Applicant expressed his intent to not drink and drive and to stop drinking alcohol altogether. About his treatment for alcohol, he successfully completed inpatient treatment in July 2011 and since then, he has been in alcohol counseling. Concerning his drinking history, he reported usually consuming beer and whiskey, primarily when alone, in unrecalled amounts. He drank to intoxication once a month. He also reported that he had been sober since July 2011. (GE 2.)

On January 6, 2012, Applicant was placed on probation before judgment for the May 2011 driving while impaired charge in state Y. The driving under the influence and speeding charges were nolle prossed. (Tr. 58.) He was sentenced to two years of supervised probation under the special conditions that he submit to a drug and alcohol evaluation and totally abstain from alcohol, illegal substances, and abusive use of any prescription drug. He was also ordered to pay a $500 fine, $145 court costs, and a $50 monthly probation supervision fee. (AE C; Tr. 44-45.) As of July 10, 2013, Applicant had complied with his probation, which was scheduled to expire on January 6, 2014. (GE 2.)

Applicant missed several sessions of his men's recovery group due to his brother's death in October 2012 and medical issues of his own. (Tr. 46.) Applicant required surgery in 2012 and was hospitalized on three separate occasions for a total of eight weeks. (Tr. 31-32.) As of July 3, 2013, Applicant had attended 23 sessions of the weekly early recovery group. Applicant was reporting continued sobriety, and he was given a good prognosis by the program's director. (GE 3.)

On July 17, 2013, Applicant responded to interrogatories from the DOD CAF about his alcohol consumption. He denied any current consumption of alcohol and reported no use since he drank ten ounces of whiskey in July 2011. As for any alcohol counseling since July 2011, Applicant was still attending the intensive outpatient program and going to AA meetings every few months. (GE 2.) Applicant last attended the outpatient treatment program and AA in December 2013. (Tr. 44, 54, 61.) Applicant was diagnosed in May 2014 with a serious medical condition. Following surgery in mid-August 2014, he was out of work until October 2014. (Tr. 33.)

Applicant acknowledges that he drank alcohol to excess on occasion and that he suffered from alcohol dependence. (Tr. 30, 35.) Yet, he also asserts that he embellished the frequency and magnitude of his alcohol use and its aftereffects, including on his work, when evaluated for admission into the inpatient program in July 2011. Applicant denies that alcohol ever interfered with his work performance. (Tr. 30-31.) He reports no use of alcohol since the day preceding his inpatient admission in July 2011. He does not believe that he can drink any alcohol safely. (Tr. 45.) Applicant denies any use of marijuana whatsoever. (Tr. 35-36.)

As to whether he has any concerns about him falsely claiming illegal drug use, Applicant responded, "I used—I exaggerated. You can say lied. I fabricated some information for the purpose of getting myself admitted. And in retrospect, I wish I hadn't." (Tr. 55.)

Two close friends of Applicant provided character reference letters on his behalf. They have known him for a long time and consider him to be a loyal citizen who would not compromise national security. (AEs A, B.) One friend, who works for the same defense contractor as Applicant, attests to Applicant having been abstinent from alcohol since July 2011 when Applicant decided that his family and career were more important to him than alcohol. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is articulated in AG ¶ 21:

> Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant consumed alcohol to the point of serious impairment of his judgment and reliability when he drove a vehicle while impaired by alcohol in January 2005 and again in May 2011. He claims he drank only three or four beers before his May 2011 arrest when it took about eight alcohol drinks for him to become intoxicated. However, he also admitted to an OPM investigator that he failed field sobriety tests when he was arrested. Disqualifying condition AG ¶ 22(a), "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent," applies.

The admission record of Applicant's July 2011 inpatient detoxification indicates that Applicant reported arriving to work late because of alcohol and working with a hangover at times. Yet, there is no evidence of alcohol-related incidents at work that would substantiate AG ¶ 22(b), "alcohol-related incidents at work; such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent."

Applicant was given a provisional diagnosis of alcohol dependence on his inpatient admission based on his self-reported drinking, which he now asserts was exaggerated about its frequency, amounts consumed, and aftereffects. Applicant could credibly have embellished his drinking history (i.e., drinking over the previous year six or more shots of whiskey per day and two to three beers on occasion) to ensure treatment and avoid a possible drunk-driving conviction. Even so, in July 2013, when asked by the DOD CAF to state the approximate date, amount, and type of alcohol, and the circumstances of his last consumption, Applicant responded, "July 2011 10 oz. whiskey." At his security clearance hearing, Applicant admitted he had relied on alcohol in the past to cope with the pain of a medical condition and with marital stress. He stated that his life was less complicated and more satisfactory now that he does not need alcohol "to get through [his] life." (Tr. 46.) His alcohol problem may well have been more serious than his latest account suggests (*i.e.*,

every other day a few beers and drinking to intoxication once a month probably."). (Tr. 50-51.)

Applicant may well have exaggerated the frequency of his excessive whiskey consumption when he sought treatment. Based on that self-report, Applicant was given a provisional diagnosis of alcohol dependence on admission. Even so, during his five-day inpatient detoxification, medical staff with experience in substance abuse treatment had the opportunity to assess the validity of the admission diagnosis. The only change in the diagnosis was that Applicant's condition at discharge was "slightly improved." Applicant's discharge to an intensive outpatient program also tends to substantiate the validity of the dependency diagnosis. Moreover, clinicians affiliated with the outpatient substance abuse treatment program told him that he needed to become involved with AA. AG ¶ 22(d), "diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence," is established.

Concerning the mitigating conditions, it is difficult to apply 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." The passage of more than 3.5 years since Applicant's May 2011 driving while impaired offense does not guarantee against recurrence in light of the six years between his two alcohol offenses. His recidivism precludes me from finding that the May 2011 incident happened "under unusual circumstances." He was on a business trip at the time, and his driving while impaired was clearly incompatible with the good judgment expected of a defense contractor employee holding a security clearance.

In light of the diagnosis of alcohol dependence, Applicant is required to take steps to address his alcohol problem and establish a pattern of abstinence to satisfy fully either mitigating condition AG ¶ 23(b) or AG ¶ 23(d), which provide as follows:

> (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.

On the advice of the attorney retained to represent him for the May 2011 drunk-driving charge, Applicant sought inpatient detoxification in July 2011 to be eligible for

probation before judgment. He admits that he was in denial of his alcohol problem at the time. However, he also testified that he came to recognize through his participation in the intensive outpatient program from late July 2011 to December 2013, that he had an alcohol problem, and that he cannot drink, even socially. Applicant's uneventful inpatient detoxification and compliance with recommended aftercare satisfies the treatment components of AG ¶ 23(d). His complete abstinence from alcohol since July 2011 with no intent to drink alcohol in the future satisfies the abstinence required to mitigate an alcohol dependency problem under AG ¶ 23(b) and AG ¶ 23(d). As for the favorable prognosis required under AG ¶ 23(d), Applicant was given a good prognosis by the director of his intensive outpatient program in July 2013. Applicant ceased his participation in his group counseling and his occasional AA attendance in December 2013, and it is unclear whether his termination of this counseling met with clinical approval. Applicant stopped attending his men's group just before his probation expired in January 2014 for the May 2011 driving while impaired offense. While this could raise questions about his motivation, his ongoing participation in outpatient therapy was not legally required. As of July 2013, Applicant had attended two weeks (8 sessions) of intensive treatment, 12 weeks of once-weekly individual therapy, and 23 sessions of a men's recovery group. He missed several group sessions over the next 18 months, but he had legitimate reasons (his brother's death and his own medical issues) that do not reflect adversely on his judgment or motivation. Applicant came to realize through his outpatient therapy that he has an alcohol problem and that he cannot safely drink. Applicant's present abstention of more than three years weighs in his favor when assessing the risk of relapse. He did not relapse into drinking when faced with the stressful circumstance of his brother's death in October 2012. Despite some concerns about his judgment because of his reported exaggeration of his alcohol abuse history, I accept as credible that he intends not to drink any alcohol in the future. The alcohol consumption concerns are mitigated by his treatment with sustained abstinence and no intent to drink alcohol in the future.

Guideline H, Drug Involvement

The security concern for drug involvement is articulated 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.

Under AG ¶ 24(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),[4] and

[4]Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Marijuana is a Schedule I controlled substance and cocaine is a Schedule II controlled substance.

(2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." The SOR alleges that Applicant used marijuana on one occasion in July 2011, when he held a security clearance. If proven, that conduct would implicate disqualifying conditions AG ¶ 25(a), "any drug abuse," and AG ¶ 25(g), "any illegal drug use after being granted a security clearance." The evidence to prove that drug abuse is a reported admission by Applicant in July 2011 that he had smoked marijuana the previous Friday, but that he had no prior use. (GE 3.) Applicant does not deny that he made that statement. However, he claims that he never used marijuana. Led to believe that his problem would look more serious if he abused an illegal drug as well as alcohol, he falsely claimed that he had smoked marijuana to enhance his chance of being admitted for inpatient detoxification.

It is difficult to see where one instance of illegal drug use would make him more eligible for treatment. At the same time, Applicant is the sole source of the reported drug use that he recanted when it was brought to his attention in the SOR. Applicant submitted two urine toxicology screens during his outpatient therapy. His initial test was positive for benzodiazepine, which the program director opined was consistent with the medication Applicant received for his inpatient detoxification. While the exact date of that initial urinalysis is not of record, it is reasonable to infer that it occurred at or near his July 25, 2011 evaluation for outpatient therapy. It is probable but not conclusive that the toxicology screen covered tetrahydrocannabinol (the active ingredient in cannabis). The evidence falls short of proving that Applicant used marijuana. Neither AG ¶ 24(a) nor AG ¶ 25(g) is established. Accordingly, there is no proven drug involvement that requires consideration of the mitigating factors.

Guideline E, Personal Conduct

The security concerns about personal conduct are articulated 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 alleged personal conduct concern is that Applicant exercised poor judgment by using marijuana in July 2011 after he was granted a DOD security clearance. Unquestionably, any illegal drug involvement by Applicant while he held a security clearance would raise security significant personal conduct concerns, as articulated in AG ¶ 15 and AG ¶ 16(e), which provides as follows:

> (e) 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 responded negatively to the drug use inquiries on his e-QIP. He asserts that he reported a single use of marijuana to staff personnel at the inpatient detoxification facility to improve his chance for admission, and that he has never used marijuana or any other illegal drug. His explanation is plausible, but also tantamount to an admission of fabrication that bears negative implications for his judgment, trustworthiness, and reliability. The Government could reasonably assume that Applicant accurately detailed his drug and alcohol use to clinicians in July 2011. Those assumptions were called into question in light of Applicant's response to the SOR. Yet, the Government did not move to amend the SOR either before or at the hearing to allege any misrepresentations by Applicant under Guideline E. The DOHA Appeal Board has consistently held that non-alleged conduct may be considered to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant had demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. *See*, *e.g.*, ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006). Applicant's reported exaggeration of his alcohol abuse history and his misrepresentation of illegal drug use cannot provide grounds for disqualification under Guideline E because they were not alleged.[5] However, the information is relevant to assessing Applicant's continued eligibility for a security clearance under the whole-person evaluation required.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).[6]

Applicant is a longtime defense contractor employee, who exercised very poor judgment when he drove a motor vehicle while impaired by alcohol in January 2005, and especially in May 2011, when he was on a business trip for his employer. Then, he

[5] Under E3.1.17 of the Directive, the SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. Department Counsel understandably did not seek to amend the SOR, given that the finding of any marijuana use depended on my assessment of the credibility of Applicant's denials of any use and his explanation for his representation to the contrary.

[6] The factors under AG ¶ 2(a) are as follows:

> (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.

exaggerated his drinking and falsely claimed that he had used marijuana in July 2011 to be admitted for treatment and avoid being possibly convicted of drunk driving. He regrets the misrepresentation of drug abuse. Nevertheless, it raises concerns about what he might do in the future to protect his job.

Applicant mitigated the concerns in this regard by being upfront about his counseling and arrests on his e-QIP. He self-reported his May 2011 arrest to his employer, albeit perhaps not as quickly as he should have, but when he was still facing a possible conviction. He disclosed in response to interrogatories that he consumed 10 ounces of whiskey when he last drank in July 2011. Applicant has demonstrated his value to his employer, as shown by his promotions over the years. He is the only engineer at his level without a college degree in his section. After considering all the facts and circumstances, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

Formal Findings

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

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge