



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-05370
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Douglas Velvel, Esq., Department Counsel  
For Applicant: *Pro se*

10/12/2017

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant illegally used and purchased prescription drugs, primarily opiates, from January 2004 to December 2012, including after he had been granted a security clearance. He abused alcohol on occasion with two drunk-driving offenses in August 2007 and April 2013. He reports no illegal use or misuse of opiates since December 15, 2012, but he continued to consume alcohol after being court ordered to abstain. Clearance is denied.

**Statement of the Case**

On September 2, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H (drug involvement), Guideline G (alcohol consumption), Guideline J (criminal conduct), and Guideline E (personal conduct). The SOR explained why the DOD CAF 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 (EO) 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 (Directive);

and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On September 30, 2016, Applicant answered the SOR allegations. The response in the file does not indicate whether or not he wanted a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 13, 2016, the Government submitted a File of Relevant Material (FORM), indicating that Applicant had requested that his case be resolved without a hearing. The FORM consisted of nine exhibits (Items 1-9). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on November 1, 2016. No response to the FORM was received by the December 1, 2016 deadline. On August 14, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant. Applicant did not object to proceeding without a hearing.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.<sup>1</sup>

### **Evidentiary Ruling**

Department Counsel submitted as Item 9 summaries of subject interviews of Applicant conducted on February 4, 2014, January 28, 2015, and February 11, 2015. The summaries were part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summaries did not bear the authentication required for admissibility under AG ¶ E3.1.20.

In ISCR Case No. 15-01807 decided on April 19, 2017, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview in the absence of any objection to it or any indication that it contained inaccurate information. The applicant in that case had objected on appeal to the accuracy of some of the information in a FORM, but had not objected to the interview summary or indicated that it was inaccurate in any aspects when she responded to the FORM.

Unlike the applicant in ISCR Case No. 15-01807, Applicant did not submit a response to the FORM submitted in his case. However, as in ISCR Case No. 15-01807, Applicant was provided a copy of the FORM and advised of his opportunity to submit

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

objections or material that he wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

**\*\*IMPORTANT NOTICE TO APPLICANT:** The attached summary of your Personal Subject Interview (PSI) is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.\*\*

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summaries, to comment on the interview summaries, and to make any corrections, deletions, or updates to the information in the report. He was advised that if he did not respond, the interview summaries may be considered as evidence in his case. Applicant chose to rely solely on the record presented in the FORM, which included the information reflected in the interview summaries, however disqualifying, mitigating, or exculpatory the information. I cannot presume without any evidence that Applicant failed to understand his due process rights or obligations under the Directive or that he did not want the summaries of his interviews considered in his case. Accordingly, I accepted Item 9 in the record, subject to issues of relevance and materiality in light of the entire record, including Applicant's admissions to the allegations.

### **Summary of SOR Allegations**

The SOR alleges under Guideline H that Applicant misused prescription medications, including opiate narcotics, and purchased them without a prescription after he had been granted a Department of Defense (DOD) security clearance on November 1, 2011 (SOR ¶ 1.a);<sup>2</sup> that he had illegally used prescription medications from approximately

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<sup>2</sup> Applicant is alleged to have misused prescription medications, including "Oxycodone, OxyContin, and Hydrocon [sic]." OxyContin is the trade name for one of several oxycodone hydrochloride opiate analgesics, which include Percocet. Hydrocodone drugs include the analgesics Hycodan, Lortab, and Vicodin.

January 2004 to approximately December 2012 (SOR ¶ 1.b); that he illegally purchased prescription medications from January 2004 to approximately December 2012 (SOR ¶ 1.c); that he was involuntarily “incarcerated” in 2006 for drug counseling (SOR ¶ 1.d); and that he had outpatient drug and alcohol treatment from March 2014 to July 2014 (SOR ¶ 1.e).

Under Guideline G, Applicant was convicted in August 2007 of driving under the influence (DUI) (refusal), running a stop sign, and open container (SOR ¶ 2.a); that he participated in a DUI-level I class in approximately January 2008 as a result of his 2007 DUI (SOR ¶ 2.b); that he received substance abuse treatment from February 13, 2008, to September 3, 2008, for diagnosed alcohol abuse (SOR ¶ 2.c); that he continued to drink alcohol despite a court order to abstain (SOR ¶ 2.d); that he pleaded no contest to April 29, 2013 charges of DUI (second offense), refusal, driving on a suspended license, and crossing the median (SOR ¶ 2.e); that he participated in a DUI-level II class in January 2014 (SOR ¶ 2.f); that he was evaluated in February 2014 and referred for substance abuse counseling (SOR ¶ 2.g); that he participated in outpatient drug and alcohol treatment from March 2014 to July 2014 (SOR ¶ 2.h); and that he registered violations of his alcohol-interlock device in November 2014 (SOR ¶ 2.i) and November 2015 (SOR ¶ 2.j).

His illegal use and purchase of prescription medications, his DUI offenses, his continued drinking against court order, and his violations of his alcohol-interlock devices were cross-alleged under Guideline J (SOR ¶ 3.b) and Guideline E (SOR ¶¶ 4.a, 4.b). Applicant was also alleged under Guideline J (SOR ¶ 3.a) and Guideline E (SOR ¶ 4.c) to have been arrested for trespassing resisting without violence, resisting with violence, and battery on a police officer, although convicted of convicted of trespassing and resisting without violence. No dates were alleged for his arrest or conviction.

When he responded to the SOR allegations, Applicant admitted the Guideline H, G, and J allegations. He did not respond to Guideline E, but Applicant admitted the underlying facts in response to the other guidelines. Applicant denied any use of opiate pain medication since December 2012, and he indicated that all programs, classes, probation, fines, and counseling have been successfully completed. He attributed the interlock-device violations to “still having a slight amount of alcohol on [his] breath from the night before sometimes mouthwash. Settings was [sic] 0.025.” Regarding the trespassing offense, Applicant asserted that he had completed his probation, farm time, fines, and anger management class. He explained that he was going through a divorce in 2013 and did not cope well with the separation. He added that he had purchased a new home in August 2015 and had remarried in September 2016. (Answer.)

### **Findings of Fact**

After considering the FORM, which includes Applicant’s Answer to the SOR as Item 1, I make the following findings of fact.

Applicant is a 37-year-old employee with a graduate equivalency diploma who has worked for his defense-contractor employer since February 2002. He is currently a senior packaging technician and holds a DOD secret clearance that was granted to him in early

November 2011.<sup>3</sup> Applicant was married to his first wife from March 2004 to July 2013. He and his current spouse wed in September 2016. Applicant has no children, and he reports no military service. (Items 2-3, 9.)

In approximately January 2004, Applicant began using prescription analgesics recreationally with friends at parties. He liked how the drugs made him feel, and in 2005, he began using one tablet of OxyContin illegally on a daily basis. He purchased the drug illegally from a friend and also obtained it with a prescription from a physician who ran a "pill mill." By 2006, he felt he was addicted to prescription opiates. While suffering from withdrawal symptoms for his drug problem, he was involuntarily committed to a treatment facility for three days of drug detoxification. Two months after his discharge, he resumed his prescription drug purchase and abuse. (Items 2, 9.) Applicant continued to abuse opiates after being placed on an anti-depressant in 2009. (Item 9.)

On May 17, 2010, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He responded "Yes" to an inquiry into whether he had illegally used any controlled substance, including prescription painkillers, in the last seven years, and indicated that he illegally took pain medication from January 2004 to August 2009 "on and off through the years above." (Item 3.)

In July 2010, Applicant fractured his back in a car accident. He was prescribed analgesic opiates but he also illegally purchased extra OxyContin and other oxycodone drugs for his personal use. He misused the drugs on a daily basis to at least December 15, 2012, after being granted a DOD secret clearance. He had additional surgeries in February 2012 and June 2012, for which he was prescribed opiate analgesics, and he was out of work on short-term disability. His abuse of prescription opiates caused marital issues, and he and his ex-wife separated in December 2012 and divorced in May 2013. During an interview with an authorized investigator for the Office of Personnel Management (OPM) on February 4, 2014, Applicant indicated that when his prescription ran out, he weaned himself off the opiates. (Items 2, 9.) During a more recent interview with an OPM investigator on February 11, 2015, Applicant denied any current association with persons who use drugs illegally and indicated that the police had closed down the office of the physician from which he obtained some of his opiates. (Item 9.)

Applicant first drank alcohol at age 15, although he had no adverse incidents until August 2007. After drinking four to five beers out with a friend, Applicant was stopped for running a stop sign. He refused to submit to field sobriety tests and was arrested for DUI, failure to stop, and open container of alcohol. He pleaded no contest and was found guilty of DUI. He was sentenced to pay an \$800 fine, perform 25 hours of community service, and complete a DUI-level I class and one year of probation. His driving privileges were

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<sup>3</sup> Applicant told an OPM investigator on February 11, 2015, that he was granted a secret clearance in May 2010. (Item 9.) On his September 2013 SF 86 (Item 2), he gave May 2010 as the date for his background investigation and indicated that he did not know the date his clearance was granted. He completed an SF 86 on May 17, 2010 (Item 3), so it is likely that he was granted his security clearance after May 2010. The SOR alleges that he continued to misuse prescription opiates after his clearance was granted on or about November 1, 2011. Applicant admitted the allegation without any change to the date.

restricted to commuting to and from work for one year. Applicant completed the DUI class as required in approximately January 2008. He was assessed and referred to a substance abuse education and counseling program, which he attended for 36 weeks between February 2008 and September 2008. (Items 2-3, 9.)

After his DUI, Applicant continued to consume alcohol, about six beers a month, when fishing or socializing at friends' homes. After he and his ex-spouse separated in December 2012, Applicant's drinking increased. On an occasion in March 2013, he consumed five or six beers during the day and then six or seven beers to intoxication at a bar that evening while socializing with a cousin and a friend. After getting into an argument with his cousin, Applicant left the bar on foot. He fell asleep on the curb near an apartment complex, and was awakened by the police. Applicant recalls getting into a physical altercation with the officer. He was arrested for felony battery on a law enforcement officer, resisting arrest with violence, misdemeanor trespassing, and misdemeanor resisting arrest without violence. (Items 7, 9.) Applicant pleaded no contest in November 2013 and was convicted of resisting arrest without violence, obstruction of justice, and trespassing. He was fined \$400 and ordered to attend eight hours of anger management counseling, to submit to a substance abuse evaluation, to serve five days on a work farm, and to complete 12 months of probation. (Item 9.)

In late April 2013, Applicant consumed ten beers at a nightclub. He was stopped for weaving and arrested for DUI-2<sup>nd</sup> offense, refusal to submit to a breath, urine, or blood DUI test after previous suspension, and for crossing the median. Applicant continued to drink alcohol, about one or two beers a month, after his arrest. At his court appearance in August 2013, Applicant was convicted of DUI-2<sup>nd</sup> offense and refusal to submit to a DUI test. He was fined \$1,700 and ordered to complete 100 hours of community service, a DUI level II class, and a victims' awareness class. He was placed on 12 months of probation, and he lost his driving privileges for one year. Applicant was court ordered to abstain from alcohol and illegal drug use while on probation. He continued to drink a beer approximately every other month, knowing that he was subject to random drug and alcohol testing. (Items 8, 9.)

On September 16, 2013, Applicant's employer submitted an adverse information report notifying the DOD about Applicant's arrest and conviction for the April 2013 DUI. (Item 8.) On his September 26, 2013 SF 86, Applicant disclosed his 2007 and 2013 DUIs and then pending charges for felony battery and resisting arrest with violence and misdemeanor trespassing and resisting arrest without violence. He also reported that he had illegally used and purchased prescription pain medications from approximately January 2004 and December 2012. He responded affirmatively to an inquiry into whether that drug involvement occurred while he possessed a security clearance. He denied any intention to be involved in any illegal drug activity in the future. In response to an inquiry concerning the misuse of prescription drugs, Applicant indicated that he had misused oxycodone from January 2004 to December 2012. (Item 2.)

Applicant sought treatment from a psychologist in late October 2013 for his alcohol and drug problem. He reported that he had struggled with pain medication for years, from

2005 until his last use on December 15, 2012, and that he had used alcohol on and off since he was about 15 years old. During counseling sessions in November 2013, Applicant expressed resistance to involvement in support groups like Alcoholics Anonymous (AA). On November 18, 2013, the psychologist noted in part, "Abstinence as the main issue and the primary problem—Dep will not respond during substance abuse." (Item 6.) Applicant did not continue in counseling with the psychologist after November 2013, electing instead to obtain his anti-depressant and anti-anxiety medications from his primary care doctor. (Item 9.)

In early February 2014, Applicant was evaluated under a court order for his DUI—2<sup>nd</sup> offense. He was referred for substance abuse treatment. During a February 4, 2016, interview with an OPM investigator, Applicant acknowledged his pattern of misuse or prescription medication and alcohol, which he attributed to his surgeries and divorce. He denied ever being diagnosed with alcohol abuse. He admitted that, despite being court ordered in August 2013 to abstain from alcohol and illegal drug use while on probation, he was drinking one beer approximately every other month. On February 6, 2014, Applicant was re-contacted by the OPM investigator. He admitted that he was drinking one beer every one to two months and expressed an intention to continue to drink at that rate, which he described as "a rare beer". He denied any intention to misuse any prescription medication in the future. (Item 9.)

On March 10, 2014, Applicant had an intake evaluation for an 18-week adult outpatient alcohol and drug abuse treatment program. He reported that in addition to the uncontrolled use of opioids from 2004 to December 15, 2012, he had abused benzodiazepines from 2011 to December 15, 2012. He denied any use of prescription opioids or benzodiazepines since December 2012, and claimed abstinence from alcohol since August 2013, which was contrary to his admission to the OPM investigator. (Item 5.) Applicant successfully completed an 18-week alcohol outpatient alcohol and drug abuse treatment program on July 17, 2014. (Item 4.) Available medical records do not reflect a clinical diagnosis.

On January 28, 2015, Applicant was again interviewed by an OPM investigator. He indicated that he had successfully completed the sentencing terms for his 2013 offenses, including an eight-hour anger management class. Applicant denied any illegal drug use since December 2012, and he indicated that he passed drug screens while he was on probation for his 2013 DUI and trespassing offenses. He claimed he did not drink any alcohol while on his year-long probation that ended in October or November 2014. He reported drinking one to four beers a week since then, even though he has a "breathalyzer machine" (interlock device) on his car for one year from November 2014. He explained that he drinks alone in his home. He denied any consumption to intoxication since he finished his probation and indicated that he feels in control of his drinking. When re-contacted by the investigator on February 11, 2015, Applicant primarily addressed his past abuse of prescription opiates, including OxyContin, and his March 2013 arrest. He volunteered that he had received two letters from his state safety council about failing his interlock breathalyzer on his vehicle in October 2014 and December 2014 [sic].<sup>4</sup> He expressed his

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<sup>4</sup> The dates for the Interlock device violations are likely incorrect. Applicant indicated during his previous

belief that he failed the breathalyzers because he had consumed alcohol the night before and his car would not start the next morning. Consequently, he was required to report in person to the safety council on a monthly basis and faced treatment should he commit a third violation. (Item 9.)

## **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(a), 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 national security eligibility will be resolved in favor of the 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 EO 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).

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interview that the device was installed in November 2014. The SOR alleges that he registered violations in November 2014 and January 2015, and he admitted the allegations when he answered the SOR.



## Analysis

### Guideline H: Drug Involvement and Substance Misuse

The security concerns about drug involvement and substance misuse are articulated in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant began using prescription analgesics recreationally with friends at parties. He liked how the drugs made him feel, and in 2005 he began using one tablet of OxyContin illegally on a daily basis. He purchased the drug illegally from a friend and also obtained it with a prescription from a physician who ran a "pill mill." By 2006, he felt he was addicted to prescription opiates. Suffering from withdrawal symptoms, he was involuntarily committed as an inpatient for three days of detoxification in 2006. He continued to illegally use and purchase prescription opiates, and misused opiate analgesics that were prescribed for him following surgeries in February 2012 and June 2012. He abused opiates on a daily basis through December 15, 2012, when his prescription for opiate analgesics ran out. He held a DOD secret clearance during the last year of his illegal drug activity. Disqualifying conditions AG ¶ 25(a), "any substance misuse (see above definition)," AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," and AG ¶ 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position," apply.

Several factors suggest that he was likely addicted to opiates, such as his daily abuse of OxyContin at times and his withdrawal symptoms with involuntary detoxification. He bought the drug illegally from a friend and an unethical physician known to run a "pill mill." He was unable to cease his illegal involvement with prescription opiates before mid-December 2012. Yet he denies ever being diagnosed with drug dependence, and the treatment records in the file do not reflect a formal diagnosis. Anecdotal references to being addicted fall short of establishing AG ¶ 25(d), "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder."

With no clear evidence implicating Applicant in the illegal use of opiates or other prescription drugs after December 15, 2012, AG ¶ 26(a) has some applicability in that it happened “so long ago.” AG ¶ 26(a) provides:

(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.

Even so, his abuse of prescription opiates, which was daily at times and continued after he was granted a DOD secret clearance, raises considerable doubts about his judgment, reliability, and trustworthiness.

AG ¶ 26(b) provides for mitigation when an individual acknowledges his drug involvement and has taken steps to address it:

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant told an OPM investigator in February 2014 that after his prescription ran out and he and his ex-wife separated in December 2012, he weaned himself off the opiate drugs. He has consistently asserted that his last use was on December 15, 2012. Although I have some concerns about Applicant’s judgment because of his illegal opiate use and purchase, as outlined in Guideline E, *infra*, I cannot presume that he has abused opiates after December 15, 2012, without evidence of drug involvement or substance misuse. The evidence shows that alcohol became his drug of choice after he and his spouse separated. His four plus years of no prescribed opiate misuse or illegal use are sufficient to establish a pattern of abstinence.

### **Guideline G: Alcohol Consumption**

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

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's drinking caused him no problems until August 2007, when he was arrested for his first DUI. After completing a DUI-level I class in 2008 and alcohol counseling from February 2008 to September 2008, he continued to drink alcohol. His alcohol consumption increased significantly after his marital separation in December 2012. He drank ten beers at a nightclub before being arrested for DUI-2<sup>nd</sup> offense in late April 2013. His DUI offenses establish disqualifying conditions AG ¶ 22(a) and AG ¶ 22(c),<sup>5</sup> which provide:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouses abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The SOR alleges, and Applicant admitted without explanation, that during substance abuse treatment from February 2008 to September 2008, he was diagnosed as an alcohol abuser (SOR ¶ 2.c). His intake evaluation for his 2014 treatment indicates that Applicant attended a DUI program in 2008. There is no evidence confirming a diagnosis that would trigger AG ¶ 22(d), "diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder." However, AG ¶ 22(g), "failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence," is established. Applicant continued to consume alcohol while on probation from August 2013 to November 2014 for his April 2013 DUI-2<sup>nd</sup> and his March 2013 trespassing and resisting arrest offenses, knowing that he had been ordered by the court to abstain from alcohol. Moreover, he violated the conditions of his alcohol-interlock device in approximately November 2014 and again in January 2015.

None of the pertinent mitigating conditions under AG ¶ 23 fully applies. His April 2013 DUI did not happen so long ago to conclude that it is unlikely to recur under AG ¶ 23(a), which states:

(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 judgment.

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<sup>5</sup> Applicant's criminal conduct (trespassing and resisting arrest) would also qualify as an alcohol-related incident away from work. He consumed five or six beers during the day and then six or seven beers to intoxication at a bar the evening of his arrest in March 2013. However, the incident was not alleged under Guideline G, despite evidence showing that he was intoxicated on that occasion. His consumption of 11-13 beers that day was excessive and could also have triggered AG ¶ 22(c).

AG ¶ 23(b) and AG ¶ 23(d) are partially established in that Applicant has had treatment for his abusive use of alcohol. They provide:

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant attributes his 2007 DUI to an isolated incident and his 2013 DUI to his failure to cope well with the dissolution of his marriage. He is credited with completing an 18-week adult outpatient alcohol and drug abuse treatment program in July 2014, although that program cannot be considered completely voluntarily, given he was under court order to comply with the substance abuse evaluation and referral for treatment. It is unlikely that his ongoing drinking would be considered compliance with treatment recommendations. He admitted to an OPM investigator on February 4, 2014, that despite being court ordered to abstain from alcohol, he was drinking one beer every other month. In January 2015, he discrepantly claimed he had not consumed alcohol during his probation. However, he admitted that after he was discharged from probation in October or November 2014, he resumed drinking one to four beers a week and that he had recently registered violations of his interlock device on two separate occasions from consuming alcohol the previous evening. Yet he now claims that mouthwash may have caused the violations, which casts doubt upon whether he fully acknowledges his pattern of maladaptive alcohol use and is willing to make the changes necessary to preclude a recurrence of excessive drinking. Neither AG ¶ 23(b) nor AG ¶ 23(d) fully applies. The alcohol consumption security concerns are not mitigated.

### **Guideline J: Criminal Conduct**

The security concern about criminal conduct is articulated in AG ¶ 30: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

Applicant has a pattern of failure to conform his behavior to the law, as evidenced by his several years of illegal use and purchase of prescription drugs (primarily the opiate OxyContin), his conviction for trespassing and resisting arrest in March 2013, his 2007 and 2013 DUI offenses, his disregard of a court order to abstain from alcohol while on probation from August 2013 to October or November 2014, and his violations of his interlock device in approximately November 2014 and January 2015. Three disqualifying conditions under AG ¶ 31 are implicated:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, persecuted, or convicted; and

(d) violation or revocation or parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant's 2007 DUI occurred some time ago. His opiate abuse stopped in December 2012. However, his recidivist drunk-driving offense of April 2013, his trespassing and resisting arrest in March 2013, and his failure to fully comply with the terms required by the court to establish rehabilitation of his DUI—2<sup>nd</sup> offense, preclude mitigation under AG ¶ 32(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." Applicant shows some rehabilitation by successfully completing the alcohol and drug treatment program in July 2014, but given his subsequent drinking, which led him to register violations of his Interlock device, I am unable to fully apply AG ¶ 32(d), which provides:

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

Applicant has not provided convincing evidence that he can be counted on to fully comply with his legal obligations.

#### **Guideline E: Personal Conduct**

The 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The SOR cites personal conduct security concerns in these aspects: Applicant's illegal use or misuse and purchase of prescription drugs from January 2004 to December 2012, including after he had been granted a DOD secret clearance; his DUI convictions, continued drinking after being ordered by a court not to consume alcohol with violations of

his interlock device; and his trespassing and resisting arrest offense. In all these instances, Applicant exhibited extremely poor judgment as articulated in AG ¶ 15. Information can have security relevance under more than one guideline. His illegal involvement with opiate medications while holding a security clearance is an aggravating factor that has independent security significance apart from whether he is reformed of his drug involvement because it shows an unwillingness to comply with rules and regulations. When considered as a whole, Applicant's exercise of questionable judgment in several adjudicative issue areas indicates that he may not properly safeguard classified or sensitive information, even though AG ¶ 16(c) does not strictly apply because some of the adverse information is sufficient for an adverse determination under another guideline. AG ¶ 16(c) provides:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

However, AG ¶ 17(g) applies because of Applicant's association from 2004 to 2012 with friends from whom he illegally purchased prescription drugs.

Concerning the potentially mitigating conditions under AG ¶ 17, his exercise of poor judgment for more than a decade was neither so infrequent or so far in the past to satisfy AG ¶ 17(c), "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(g), "association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations," has some applicability in that there is no evidence that Applicant has been associated with any illegal drug users or sellers since 2012. However, AG ¶ 17(g) is irrelevant to Applicant's maladaptive use of alcohol and his failure to comply with court orders. AG ¶ 17(d) is partially established in that Applicant is not likely to engage in illegal drug use or substance misuse in the future. AG ¶ 17(d) states:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The personal conduct security concerns are not fully mitigated.

## 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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(d).<sup>6</sup> In making the overall commonsense determination required under AG ¶ 2(a), I recognize there is no evidence of any adverse impact on Applicant's work because of his substance abuse. Even so, Applicant has raised considerable doubts about his judgment, reliability, and trustworthiness by taking prescription drugs without a prescription for several years, including at times daily. He admitted that he felt dependent on opiates. His purchases from a physician that operated what he described as a "pill mill" suggests a drug problem that was out of control. After his marital separation, he turned to alcohol with adverse legal consequences. There is no evidence of any alcohol-related incident since April 2013, and he apparently successfully completed an outpatient alcohol and drug program in July 2014. Yet he also continued to consume alcohol while on probation and his more recent violations of his interlock device indicate an inability or unwillingness to comply with rules and regulations.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons discussed, Applicant has raised enough doubt in that regard to where I am unable to conclude that it is clearly consistent with the national interest to continue his security clearance eligibility.

## 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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT

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<sup>6</sup> The factors under AG ¶ 2(d) 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.

Subparagraphs 2.a-2.j:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a-4.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge