



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



In the matter of:)
)
) ISCR Case No. 15-08512
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: Jacob T. Ranish, Esq.

05/03/2018

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guidelines E, Personal Conduct, and H, Drug Involvement and Substance Misuse. He mitigated the concern under Guideline G, related to Alcohol Consumption, and Guideline J, Criminal Conduct . National security eligibility for access to classified information is denied.

Statement of the Case

On June 7, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J, Criminal Conduct; G, Alcohol Consumption, and E, Personal Conduct. The SOR was amended in November 2017 to include H, Drug Involvement and Substance Misuse. The action was taken 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on July 18, 2016. He requested a hearing before an administrative judge. The case was assigned to me on August 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 14, 2017, for a hearing on November 9, 2017. The hearing was rescheduled for good cause on November 7, 2017. I convened the hearing as rescheduled on January 25, 2018. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibits (AX) A through F, which were admitted. DOHA received the transcript of the hearing (Tr.) on February 1, 2018.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions¹ issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

Findings of Fact

Applicant is 48 years old. He works as an aircraft mechanic for a defense contractor. He married in 1997 and separated in 2011. He is separated from his wife but not officially divorced and has five children as a result of his marriage. He graduated from high school in 1990. He served on active duty in the U.S. Navy from 1991 until 2001, receiving an honorable discharge. (AX E) In 2002, he received a license in aircraft mechanics. He has held a security clearance since about 2002. (GX 1) He has been employed with his current employer for about 16 years.

Criminal Conduct

In May 1995, while in the U.S. Navy, Applicant reported that he was stopped at the gate of his base after having several drinks with a woman he met. He was charged with Driving Under the Influence (DUI). (SOR 1.a) As a result of this incident, he was fined and reduced in rank. He disclosed this information on his 2007 security clearance application (SCA). As a result of the DUI, Applicant received inpatient detox and rehabilitation for one month. He reported in a 2018 evaluation that this 1995 incident was a "wakeup" call for him and he noted that he stopped drinking alcohol for almost one and a half years after that occurrence. (AX A)

¹ SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

As to SOR 1.b, in June 2004, when Applicant was living with his wife, a protective order was issued against him. They had a difficult relationship and were arguing. Applicant reported during his interview that his wife shoved him and he shoved her. She called the police and Applicant was arrested for domestic violence. He also acknowledged that drinking was a problem in the relationship.

In October 2005, Applicant was charged with child abuse and assault. (SOR 1.c) He admitted that he spanked his two daughters with a belt after he learned that they had misbehaved on the school bus. At the hearing, Applicant stated that he was "dumb." When the girls went to school the following day they had marks or bruises that were observed by the teacher. He was not arrested but cited by the county child protective service. He understands that it was not appropriate for him to take that action and he now speaks to his children when an inappropriate behavior occurs. However, he acknowledged that he was following his parents' method of discipline. (Tr. 25, GX 3)

As to SOR 1.d, an August 2013 misdemeanor charge of second degree assault and possession of paraphernalia, Applicant could not recall any details. However, he stated that he was dating a woman with alcohol problems. He believes they were arguing, but he did not harm her. He was in his home and stated that he was not drunk. The paraphernalia was a souvenir pipe according to Applicant. The record shows that the disposition of the case was placed on the stet docket. (GX 5)

In April 2014, Applicant was arrested and charged with second degree assault, and a protective order was issued against him by his girlfriend. This incident involved alcohol. (SOR 1.e) Applicant explained that she drank alcohol every day and would stay in bed for days or weeks drinking vodka. (Tr. 26) He stated that he tried to help her but she refused rehabilitation. He wanted to leave the relationship but she threatened to call his employer. (Tr. 27) The disposition of the case is unclear. The incident report in the record states that the girlfriend was charged with making false claims. (GX 7)

As to SOR 1.f, Applicant was arrested in June 2014, and charged with second degree child abuse and second degree assault. He pled guilty and was sentenced to five years in prison, all but three days suspended, and five years of probation. Applicant's girlfriend's son, who was 16 years old, stole money from Applicant and his girlfriend. On one occasion, Applicant confronted the son and Applicant claimed that the son attacked him and Applicant defended himself. (Tr. 28) The son reported that Applicant hit him with an iron, which Applicant denied. (Tr. 28, GX 3)

Applicant ended the relationship with his girlfriend in 2014. He acknowledged that it was the worst time of his life. He also knows now that he was an enabler. Applicant's girlfriend died of causes related to alcohol and drugs. (Tr. 27) Applicant is separated from his wife and they have not lived together since 2011. However, now they are on good terms but still not divorced. Applicant's wife wrote a letter of reference for him. (AX F)

Alcohol Consumption

The SOR (2.a) cross-alleged the information alleged in 1.a and 1.e. In SOR 2.b, the allegation referred to the 2014 alcohol treatment that Applicant received from the Veteran's Administration. As to SOR 2.c, from July 2014 to August 2014 Applicant received inpatient treatment for alcohol detoxification from an institute. In an amendment to this guideline, SOR 2.d, in July 2014, it was alleged that a licensed clinical social worker (LCSW) diagnosed Applicant as Alcohol Dependent.

Applicant reported during his subject interview in 2015 that he started drinking alcohol at the age of 15. He stated that he was a heavy drinker (four to five glass of vodka daily) when he was involved with his girlfriend from 2011 to 2014. He acknowledged that his alcohol use was six days a week to intoxication. He also stated that the alcohol affected his work and he had been arrested in the past. (GX 3) He voluntarily sought help in August 2014, after speaking to his employer. He explained that he needed help and counseling. He was referred to rehabilitation. He was given leave to enter into a program. (Tr.30)

Applicant was motivated to address the alcohol and drug issues in his life in June 2014 due to support from his children and his wife from whom he is still separated. Applicant entered an inpatient military program for 30 days. He successfully completed the program in August 2014. (AX D) The outpatient treatment plan included 90 days of Alcohol Anonymous (AA), attendance at a weekly men's group and an anger management class once a week. He stopped drinking in August 2014. (AX A)

Applicant explained that after treatment at the institute in 2014, he engaged in a life of recovery. He was admitted on July 30, 2014, for his intensive treatment for "substance use disorder." He received certificates of successful completion of the program and discharged on August 27, 2014. (AX D) He still attends AA, anger management meetings, and he sees a counselor once a week. (Tr. 31) According to a 2018 evaluation, he has a spiritual practice and a new girlfriend who does not drink. At the hearing, he confirmed that he is periodically tested for alcohol use and has never had a positive result. (Tr. 31)

The progress notes and record from the 30-day inpatient program (GX 7) in 2014 noted alcohol dependence and opioid dependence. As to the issues with alcohol, that was listed as the primary substance abuse. The intake report noted that Applicant checked that " he is willing to do what it takes to get and stay sober." (GX 7 at 14) The notes and the record indicate that Applicant actively participated in all sessions. (GX 7 at 126)

Specifically, a 2018 substance abuse evaluation by a LCSW included standardized testing which reflected a diagnosis of 303.90 (DSM) sustained remission from an alcohol disorder. Applicant has been sober for a significant period of time. The evaluator wrote that Applicant does not have any problematic use, nor is there a pattern to the use

because he has been sober for about four years. (AX A) The evaluator commented that Applicant is not at a risk of relapse or return to his previous behavior. Furthermore, the 2018 report stated that Applicant had excellent insight into his situation and expressed sincere remorse over his past. (AX A)

Personal Conduct

Applicant completed an SCA on February 19, 2015. This was not his first application. He completed an SCA in January 2007. (GX 1, 2) The SOR, which originally alleged 3.a through 3.d was amended to include two new allegations 3.e, and 3.f.

As to SOR 3.a, Applicant responded “yes” to Section 22- Police Record, but the SOR alleged he did not disclose the information alleged in subparagraph 1.d, and 1.e in criminal conduct. Applicant did disclose the information concerning those allegations. He listed in the description part, each case number and outcome of every charge and stated incident details and that he was waiting for a pre-trial hearing in March 2015. He noted the cases were closed except for the last arrest in June 2014. (GX 1, GX 6) He also disclosed the criminal incidents that were alleged in 1.c and 1.f.

As to SOR 3.b, Applicant responded “no” to Section 22- Police Record: have you ever been charged with an offense involving alcohol or drugs? The SOR alleges that Applicant did not disclose the allegation under criminal conduct in 1.a and 1.d. Applicant listed the allegation in SOR 1.a from 1995 in his 2007 SCA, and as to not disclosing 1.d the August 2013 second degree assault and possession of paraphernalia, Applicant’s incident history (GX 6) reflects that those charges were dropped by his former girlfriend, and that he was acquitted. He also answered Section 24- Use of Alcohol in his 2007 SCA that he was charged with the 1995 DUI while in the Navy.

As to SOR 3.c, Applicant answered “no” in response to Section 24 – Use of Alcohol: Ordered to seek counseling or treatment as a result of use of alcohol. The SOR alleged that Applicant failed to disclose that information alleged under criminal SOR 1.a. That allegation refers to the 1995 DUI which Applicant reported in his 2007 SCA. In his 2015 SCA, he listed voluntary treatment that he has had since that time. There is no place in the record that states Applicant was “ordered to receive” alcohol treatment. Instead it states that he subsequently received alcohol treatment from the Navy. When Applicant completed his intake section for the inpatient alcohol treatment, he volunteered the information that he received detox and rehabilitation in 1995. (GX 7 at 5)

As to SOR 3.d, Applicant responded “yes” in response to Section 24 – Use of Alcohol: Sought counseling or treatment as a result of your use of alcohol. The SOR allegation 3.d states that Applicant failed to disclose the information as alleged in SOR 2.c. Applicant listed the treatment that he currently receives. He did not list the 2014 inpatient treatment for alcohol detoxification.

An amendment was made on November 7, 2017 for Paragraph 3 of the SOR. It added two new allegations 3.e and 3.f. Those allegations refer to falsifications on the

2015 SCA and the 2007 SCA. Applicant admitted those allegations at the hearing. He failed to disclose his illegal drug use within seven years of 2015 as described in the amended Guideline 4 (Drug Use). This was in response to Section 23 – Illegal Drug Use and Drug Activity. Applicant also admitted that he failed to disclose his illegal drug use within 7 years on his 2007 SCA in response to Section 24. (Tr. 36) Applicant explained that he was depressed and confused when completing the form in 2015. (Tr. 35) Applicant stated that his employer knew of his alcohol problems in 2014, but the record is unclear as to any drug use.

Drug Involvement and Substance Misuse

The Statement of Reasons was amended on November 6, 2017, by adding Paragraph 4, Guideline H, Drug Involvement and Substance Misuse. The amended SOR alleged under this guideline SOR allegations 4.a through 4.g. Applicant denied all the allegations because he disputed the fact that he used illegal drugs constantly.

As to SOR 4.a, the allegation stated that in approximately July 2014, a licensed clinical social worker diagnosed him as having a condition described as opioid dependence. (GX 7 at 4) The report from 2014 reflected an opioid dependence and Applicant agreed with that statement at the hearing, but he also stated that he did not abuse “That stuff.” (Tr. 39)

SOR 4.b alleged that Applicant from approximately 2011 until at least July 2014, misused Percocet with varying frequency without holding a valid prescription. The 2014 report lists under substance abuse history that Applicant used three at a time and that the last use was two weeks ago. Applicant insisted that he used it, but was not abusing it or dependent upon it. (Tr. 40) He testified that he used this drug about five times while holding a security clearance. (Tr. 47) When questioned further, Applicant believed he had a prescription for the drug due to a fall. (Tr. 48)

SOR 4.c alleged that from approximately 1985 until at least July 2014, Applicant illegally used marijuana with varying frequency. Applicant acknowledged that he used marijuana as early as 15 years old, but he did not use it constantly. (Tr. 41) The report stated that the use of marijuana was random and the last use was July 25, 2014. (GX 7) Applicant believed he used marijuana about ten to twelve times while holding a security clearance.

SOR 4.d alleged from approximately 1986 until at least July 2014, he illegally used cocaine with varying frequency. As to cocaine, Applicant reported that “he would buy \$40 all the time” and his last use was two weeks ago from July 26, 2014.

SOR 4.e alleged from approximately 1988 until at least July 2014, he illegally used heroin with varying frequency. The 2014 evaluation intake report states that Applicant reported that he used heroin at 18 and that the last use was two weeks before July 26, 2014. He noted that “one bag is good.”

SOR 4.f alleged from approximately 1990 until at least July 2014, Applicant illegally used angel dust with varying frequency. Applicant reported on the 2014 evaluation intake that during his 20's he used angel dust and hallucinogens. (GX 7 at 4) At the hearing, he stated that he used once. (Tr. 51)

SOR 4.g alleged that from no later than September 2007 until July 2014, Applicant illegally misused the controlled substances described in paragraphs 4.b through 4.f. Applicant stated that he did not recall using benzoids, but reported in the 2014 intake he was prescribed the drug in his 40s. He stated that he used ecstasy once, but he did not remember when. (GX 7 at 4)

Applicant testified that during his military career he did not "use" drugs and implied that he never had a positive urine test. (Tr.42) He consistently maintained that his "main abuse" was alcohol. He admitted that he used marijuana after obtaining a security clearance. He admitted that he used cocaine about ten times while holding a security clearance. He acknowledged that he was aware that he was using illegal drugs while holding his security clearance. He clarified that when he told his employer that he had a "substance problem" he was referring to alcohol. (Tr. 46)

The 2018 substance abuse evaluation conducted by a LCSW was via teleconference. An interview was conducted and an Alcohol Use Disorders Test (AUDIT) was given to Applicant. The LCSW reviewed the SOR allegations. The LCSW stated that Applicant was candid and forthright throughout the evaluation process. She also reported that Applicant is actively engaged in rectifying his past behavior by engaging in a recovery lifestyle. His current girlfriend does not drink alcohol or use illegal drugs. He has a sponsor from his AA program. The evaluator reported that she was familiar with the Adjudicative Guidelines for Security Clearances, having previously held a security clearance. She is also a certified substance abuse counselor. (AX C) and believes Applicant is not at risk of relapse, or return to his previous behavior.

Applicant reports that he is a changed man. He has been compliant with his probation program, but he still has two years of probation to complete. His probation office wrote a letter of reference for him. He has no other criminal charges since 2014. He has an excellent relationship with his daughters and his wife. They also wrote letters of recommendation for Applicant.

Applicant submitted 11 letters of recommendation. Each letter attests to his honesty and trustworthiness. His daughters both wrote letters attesting to Applicant's acknowledgement of his past mistakes and his taking responsibility for them. Each person had reviewed the SOR allegations and acknowledged that Applicant's relationship with his girlfriend after separating from his wife was the beginning of his troubles. A branch manager from Applicant's company stated that Applicant performs his work in an outstanding manner. The letters describe Applicant as a good father, Navy veteran and a good man. (AX F)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, Section 7 of EO 10865 provides that adverse 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 E: Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified 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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement ... to determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he did not list any illegal drug use in either his 2015 or 2007 SCAs. He stated that he was confused and depressed, but I do not find that sufficient mitigation in this case. He answered the other sections in the 2007 and 2015 concerning alcohol use and treatment with sufficient notice to the Government. However, as to Guideline E, Personal Conduct SOR 3. e, and SOR 3. f, I find that Applicant intentionally falsified the SCAs. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not report specific use of marijuana, cocaine, heroin, and other illegal drugs on his 2007 or 2015 SCAs. He did answer the other allegations under Guideline E to the best of his ability. He put details about his child abuse and assault incidents. He listed his alcohol treatment that he had in 2014 and in the present. He described his 1995 DUI while in the Navy in his 2007 SCA. He answered the question about being charged with incidents involving alcohol. The other charges involving his domestic violence incidents may have involved the other person's drinking but not his. AG ¶¶ 17(c), 17(d), and 17(e) provide mitigation for SOR 3.a-3.d, but not 3.e and 3.f.

Guideline J: Criminal Conduct

AG ¶ 30 sets forth the security concerns 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 three conditions that could raise a security concern and may be disqualifying in this case:

(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 person was formally charged, formally prosecuted or convicted; and

(c) individual is currently on parole or probation.

Applicant had a 1995 DUI while in the Navy. The other domestic-violence charges and child-abuse incident with his daughter occurred in 2004 and 2005. The disposition of the cases was not entirely clear from the record. As to the last incident in 1.f in June 2014, Applicant is still on probation. He has completed three of five years with no problem. There is also lack of clarity about the child abuse and second degree assault (misdemeanor) with his former girlfriend's son alleged in 1.f. An incident report in the file states that the original charges by the girlfriend were dropped and she was charged with making false statements, but Applicant pled guilty after charges were reopened. The evidence establishes the above three disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(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; and

(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 mitigated the criminal conduct concerns due to the passage of time, his lack of association with the persons involved, and the fact that he has been compliant with his probation. He has had no recurrence of incidents since 2014. He takes anger management classes and it is highly unlikely that these incidents would recur.

Guideline H: Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana, cocaine, and heroin with varying frequency. He had a security clearance while he continued to use the illegal drugs. He claimed he had a prescription for the Percocet. He was diagnosed with opioid dependence in 2014. Therefore, AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be applicable:

- (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; and
- (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's last use was noted as July 2014. I do not find that sufficient time has transpired for mitigation in this case given the period of time in his life that he illegally used drugs. He did seek help for his alcohol disorder and some substance abuse and no longer is involved with the former girlfriend but he denied any use on his SCAs and

minimized the use over the years, stating that he did not use the drugs in question constantly. I do not find mitigation under this Guideline.

Guideline G: Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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

The guideline at AG ¶ 22 contains seven conditions that could raise a security concern and may be disqualifying. Five conditions may 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 the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
- (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;
- (e) the failure to follow treatment advice once diagnosed; and
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Applicant has a 1995 DUI. The domestic incidents that involved drinking are cross-alleged as under Guideline J. Applicant admits his diagnosis for an alcohol disorder and received treatment. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline at AG ¶ 23 contains four conditions that could mitigate security concerns. Three conditions may apply:

- (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;

(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 sought treatment in 2014. He completed an inpatient and outpatient program. He was compliant with both. He readily acknowledges that alcohol was ruining his life. He has been sober since July 2014. A 2018 substance abuse evaluation by an LCSW declared that Applicant continues to recover with AA meetings, and attendance at a weekly men's meeting. The report stated that Applicant was forthright and had insight into his situation. He has a sponsor in AA and has a new girlfriend who does not drink or use drugs. After evaluating Applicant using a standardized test for alcohol, she stated that her diagnosis was Alcohol Use Moderate – in Sustained Remission. She stated in that report that Applicant is not at risk of relapse, or return to his previous behavior.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is respected by those that know him. He performs well at work. He was in the U.S. Navy and was honorably discharged. He has worked at his current employment for 16 years. He has held a security

clearance since 2001. He has excellent letters of recommendation. He has not had any criminal incidents since 2014. He admitted and obtained help for his alcohol problems. He acknowledged that he is not the same person as before. He successfully completed inpatient and outpatient programs. His 2018 evaluation deems his alcohol in sustained remission. He is doing everything to stay sober. He has a sponsor in AA, has a men's group and a support network. He has removed himself from a bad relationship. He is described as a good father by his daughters.

Applicant did not report on two SCAs any involvement with drug use. This is troubling. In his intake questionnaire in 2014, he revealed use of marijuana, cocaine, heroin, angel dust, and other illegal drugs as recent as July 2014. He maintains that alcohol was his major problem and not drugs. He was adamant that he did not constantly use illegal drugs. However, the fact that he has even sporadically used over a 20-year period, while holding a security clearance, is not sufficient mitigation at this time. He has made great strides, but the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the concerns under Guidelines J and G, but failed to mitigate the security concerns arising under Guidelines H and E.

Formal Findings

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

Paragraph 1, Guideline J:	FOR APPLICANT
Subparagraphs 1.a-f:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a-2d:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-d:	For Applicant
Subparagraphs 3.e-f:	Against Applicant
Paragraph 4, Guideline H:	AGAINST APPLICANT
Subparagraphs 4.a-g:	AGAINST APPLICANT

Conclusion

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

Noreen A. Lynch
Administrative Judge