DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
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	)	
Applicant for Security Clearance	)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

08/15/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. There is sufficient evidence to mitigate the foreign influence concern based on his family ties to Russia via his estranged and soon-to-be-divorced spouse who is a dual citizen of Russia and the United States, and his failure to report two obvious contacts with foreign nationals. But there is not sufficient evidence to mitigate the concern based on his long-standing, years-long battle with alcohol, which includes multiple sessions of inpatient treatment, and his recent resumption of drinking. Likewise, although dated, his drug abuse while holding a security clearance is too serious to be mitigated. This is especially so given that his illegal drug use often coincided with his use of alcohol. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted his most recent Questionnaire for National Security Positions (SF 86 format) on January 12, 2015.[1] This document is commonly

[1] Exhibit 2.

known as a security clearance application. Thereafter, on June 27, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline B for foreign influence based on family ties to Russia via his spouse who is a dual citizen of Russia and the United States.

Applicant answered the SOR on August 1, 2016. He admitted the two factual allegations in the SOR, and he requested a decision based on the written record in lieu of a hearing. After receiving and reviewing the Government's written case (known as a file of relevant material), he changed his mind in December 2016 and requested a hearing before an administrative judge.

The case was assigned to me on February 7, 2017. The hearing took place over two sessions, the first on April 25, 2017, and the second on July 12, 2017, for the reasons described below. Applicant appeared at each session without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-11. Applicant offered no documentary exhibits at either session, but he called three character witnesses and presented his own testimony. The hearing transcripts (Tr. and 2Tr.) were received on May 4, 2017, and July 20, 2017, respectively.

Procedural Matters

The hearing was conducted over two sessions because I continued the initial hearing *sua sponte* for two main reasons.[2] Principally, the hearing was taking longer than anticipated, and I was concerned that we were running out of time to finish the hearing. In addition, I was concerned the case was going well beyond the rather simple, straightforward family ties alleged under Guideline B in the SOR, that the SOR had become a moving target, and that Applicant had not received sufficient notice of the other matters Department Counsel intended to pursue. I further expressed my concern that if the Government desired to proceed on the other matters, the proper way to proceed was to amend the SOR and give Applicant notice and an opportunity to respond in accordance with the applicable due-process standard we follow.

After the hearing was recessed, I gave Department Counsel leave to amend the SOR until May 30, 2017, and Applicant had an opportunity to review and respond to the amended SOR by June 20, 2017. Department Counsel timely amended the SOR by adding 12 allegations and 3 security guidelines as follows: (1) two additional allegations under Guideline B for foreign influence; (2) three allegations under Guideline G for alcohol consumption; (3) five allegations under Guideline H for drug involvement; and (4) two allegations (the second is a cross allegation to other matters in the SOR) under Guideline E for personal conduct. Likewise, Applicant timely answered the amended

[2] Tr. 74-81; 2Tr. 4-5.

SOR and his responses were mixed, although he admitted most of the allegations. Consequently, the decision in this case is based on the SOR, as amended.

In addition, at Department Counsel's request and without objection from Applicant, I took official or administrative notice of a number of facts reflecting the U.S. Government's official position regarding the country of Russia, as alleged under Guideline B.[3] Necessary and pertinent facts are mentioned in the discussion section of this decision.

Findings of Fact

Applicant is a 61-year-old employee who is seeking to retain a security clearance. He is employed as a principal systems engineer for a large company in the defense industry. He has been so employed since 2007. He has a long employment history as an engineer for various federal contractors. He was granted a security clearance for the first time in 1986. His formal education includes a bachelor's degree, a master's degree, and some course work in a Ph.D. program. He married for the third time in 2001, although he and his wife have lived separately since about January 2015.

Applicant presented evidence of his good character by way of three character witnesses consisting of two co-workers and a friend who leads a recovery group. The first co-worker, who has known Applicant since 2010, described Applicant as an honest and trustworthy person.[4] He has no concerns about Applicant's ability and willingness to properly handle and safeguard classified information.[5] The second co-worker, who has known Applicant for the last four years, also has no concerns about Applicant's ability and willingness to properly handle and safeguard classified information.[6] The leader of a recovery group has known Applicant for about the last ten years. He described Applicant as "highly motivated" to learn from the recovery group.[7] He described Applicant as "very honest and forthright about his past, and he was impressed with Applicant's integrity."[8] He had no reservations about Applicant's ability and willingness to properly handle and safeguard classified information, and remarked that he heard Applicant state the following: "Putin cannot be trusted."[9]

[3] Exhibit 11; 2Tr. 26-28.

[4] Tr. 34.

[5] Tr. 39.

[6] Tr. 51-52.

[7] Tr. 55.

[8] Tr. 56.

[9] Tr. 60-61.

1. Applicant's connections to Russia and related matters

Applicant has connections to Russia via his marriage, because his spouse is a dual citizen of Russia and the United States.[10] In addition, his spouse has a son and a daughter-in-law who are both citizens of and residents in Russia. He has made seven trips to Russia over the years, the last trip in 2005. He married his current wife in 2001, which is when she arrived in the United States. They had met the previous year when he was traveling in Russia. She was trained as a physician (M.D.), but was working as a medical aesthetician in Russia. She became a naturalized U.S. citizen in about 2007. They have lived apart since about January 2015, when she moved to another state more than 1,000 miles away. Initially, they planned to continue living together, but she at some point entered into another relationship. Applicant considers them separated and a divorce is in their future because the marriage is now irretrievably broken.[11] He still speaks with his wife regularly, and they have continued to file joint income tax returns.[12]

Applicant's Russian stepson is in his early 30s, and he served for a few years in the Russian military after attending a military academy.[13] His stepson is married to a Russian citizen, and Applicant has little contact with either. He last spoke with his stepson in about December 2015.[14] He last saw his stepson in 2005.[15]

Applicant had contact with a Russian nuclear physicist during 1999-2004, which he did not report to security officials until about 2008.[16] He met the physicist during his first trip to Russia while on an airplane. He subsequently spent some time with the physicist and his family and co-workers. This included a visit to the physicist's workplace where Applicant received a tour. Applicant stated that they may have discussed basic physics, but they did not discuss technology, nor did they discuss the work that Applicant was then doing. The 1999 trip is the sole occasion when Applicant saw the physicist in-person, and all subsequent contacts were through e-mail, telephone, exchange of photographs, etc. Applicant did not report this contact sooner because he did not realize it was a reportable matter.

In addition to the Russian connections, Applicant lived with a Chinese national in the United States during 1999-2001, which he did not report to security officials until

[10] Exhibit 4 (describing family ties and travel to Russia).

[11] 2Tr. 53-54

[12] 2Tr. 118-120.

[13] 2Tr. 54-56.

[14] 2Tr. 58.

[15] 2Tr. 120-121.

[16] 2Tr. 58-61; Exhibit 3.

about 2009.[17] This occurred when a Chinese national and her nine-year-old daughter were living with Applicant's brother at Applicant's home. Applicant did not report this contact sooner because he did not realize it was a reportable matter.

Concerning failure to report, Applicant stated at the hearing that there was a period of time when he was negligent and did not pay attention to his obligations in holding a security clearance.[18] He went on to say that he is now better trained and far more focused on taking his security-clearance responsibilities seriously. He also emphasized that his current employer places more and more emphasis on such matters.

2. Applicant's history of excessive consumption of alcohol

Applicant admits a long history of excessive consumption of alcohol going back to about 1971 and continuing through at least 2015.[19] He admits that alcohol has been a battle that started in 1991 and it's a battle he will have for the rest of his life.[20] There were periods (some of great length) where he abstained from alcohol. For example, he abstained from alcohol during 2006-2011, a period of about four and a half years. He then resumed drinking through November 2011 until he went into an inpatient treatment program, because his drinking had gotten out of control or was approaching out of control. After completing treatment in 2011, he abstained for about three more years until sometime in late 2014 or early 2015. He then abstained from about June 2015 until he resumed drinking in June 2017, which coincided with a wedding. He has since had two or three beers on a few occasions. He attends a support group in a self-help program every Friday. He explained that he resumed drinking in June 2017 due to a series of stressful events.[21] He intends to continue working to abstain from alcohol.[22]

Applicant attended multiple treatment programs over the years. Altogether, he attended inpatient treatment six times, the first of which was in 1991.[23] He last attended an inpatient program in 2015.[24] Upon discharge from the 1991 inpatient program, he was diagnosed with alcohol dependency, amphetamine dependency, and poly drug dependency.[25]

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[17] 2Tr. 63-65.

[18] 2Tr. 116-118.

[19] 2Tr. 71-85; Exhibit 9 (describing history of alcohol use).

[20] 2Tr. 120.

[21] 2Tr. 123-124.

[22] 2Tr. 125.

[23] 2Tr. 25.

[24] 2Tr. 78-80.

[25] Exhibit 10 at 4.

Applicant's history of excessive consumption of alcohol includes an alcohol-related incident during a trip to Russia in 2005.[26] The incident led to Applicant having contact with the Moscow police after a heavy night of drinking after which he became lost and blacked out. The local police noticed him in his intoxicated condition and took him to a police station where he was detained for several hours sitting on a bench. No one spoke English and he did not speak Russian. The police examined his papers and otherwise allowed him to sober up before releasing him without charges or a citation. He described the incident as a "pretty bad experience," and that it scared him away from further travel to Russia.[27]

3. Applicant's history of illegal drug use

Applicant's history of illegal drug use includes the misuse of prescription medications, use of marijuana, and use of cocaine, all of which occurred after the Defense Department granted him a security clearance in about 1986.[28] A brief chronology based on the available documentation follows below.

Applicant had inpatient treatment during March-April 1991 for help in recovery from alcohol and drug dependency.[29] He was admitted to an inpatient program on March 30, 1991, due to an inability to maintain abstinence following discharge from a January-March 1991 outpatient program. Upon discharge from the inpatient program, he was diagnosed with alcohol dependency, amphetamine dependency, and poly drug dependency.[30] He then received treatment in an outpatient program during April-May 1991. Upon discharge from the outpatient program, he was diagnosed with alcohol dependency and poly drug dependency.[31]

In his November 1996 security clearance application, he reported having engaged in illegal drug use during the last seven years.[32] In particular, he reported misusing the prescription drug Ritalin approximately 25 to 30 times from June 1991 to June 1993. He reported no other drug abuse.

Applicant provided additional information about his use of both alcohol and illegal drugs during his March 1997 background investigation.[33] He disclosed youthful use of marijuana as well as experimentation with LSD (a couple of dozen times), sleeping pills

[26] 2Tr. 65-71; Exhibit 3.

[27] 2Tr. 47.

[28] 2Tr. 87.

[29] Exhibit 10.

[30] Exhibit 10 at 4.

[31] Exhibit 10 at 8.

[32] Exhibit 8.

[33] Exhibit 9.

(a few times), Valium (a dozen times or so), and speed. By the early 1990s he was drinking heavily, and so he began the periodic use of stimulants (Ritalin) to keep going through a weekend of drinking and to get him going Monday morning to work. He also stated that he failed to completely disclose the full extent of his illegal drug use as a teenager during his 1988 background investigation. In particular, he failed to disclose his use of LSD and speed because he was concerned that his employer might find out that he used drugs more serious than marijuana.

Applicant completed an August 2007 security clearance application wherein he disclosed (1) illegal drug use in the last seven years and (2) illegal drug use while possessing a security clearance.[34] He reported using cocaine in May 2006 several times while he was drinking. He reported using cocaine during January-February 2004 on several occasions while he was drinking. He reported using uppers during several weekends in March-May 1991 sometimes while he was drinking. He reported using marijuana in June 1987 on a single occasion. And he reported using marijuana during January-May 1973 a couple of dozen times when he was a high-school student. He noted that his drug use had been "very sparse," and that he had problems with alcohol, although he had not used alcohol or any other substances since September 2006.

Applicant provided additional details about his illegal drug use during his November 2007 background investigation.[35] Concerning his use of cocaine in 2006, he stated that it occurred during a period of heavy drinking when he was in the Ph.D. program. He stated that he used cocaine with younger classmates in a bar. He used cocaine four times a day on three consecutive days during one week. His abuse of alcohol became so serious that he quit the Ph.D. program in June 2006. He then admitted himself to inpatient treatment and counseling for his drug and alcohol abuse.

Most recently, Applicant completed a December 2014 security clearance application wherein he disclosed illegal drug use while possessing a security clearance.[36] He reported using uppers during several weekends in March-May 1991 about a dozen times sometimes when he was drinking. He reported using cocaine during January-February 2004 on several occasions (five to eight times). And he reported using cocaine during May-June 2006 several times (five to six times). He provided additional details about his illegal drug use during his March 2015 background investigation.[37]

Applicant provided some clarifications about his illegal drug use both in his answer to the amended SOR and at hearing. In his answer, he explained that he had not seen the diagnoses from the inpatient programs in 1991 or 2006. He also explained that he had had used marijuana more than three or four times since 1987. And he had

[34] Exhibit 1.

[35] Exhibit 7.

[36] Exhibit 2.

[37] Exhibit 6.

not used cocaine since 2006. At the hearing, he stated that he believes that he has not used amphetamines since 1991.[38] He explained that alcohol (not cocaine) was the primary reason for the 2006 inpatient treatment.[39] He confirmed that his cocaine use took place in two periods, first in 2004 and then in 2006.[40] His last use of cocaine, or any other illegal drug, was in the summer of 2006.[41] Concerning marijuana, he repeated the information from his answer in that he had not smoked marijuana more than three times since 1987; it is a drug he doesn't like; and he last used it in 2003 or 2004.[42]

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865*, Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.[43]

It is well-established law that no one has a right to a security clearance.[44] As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[45] Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.[46] The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.[47]

[38] 2Tr. 88.

[39] 2Tr. 89.

[40] 2Tr. 89.

[41] 2Tr. 90, 95.

[42] 2Tr. 92-93.

[43] The 2017 AG are available at http://ogc.osd.mil/doha.

[44] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

[45] 484 U.S. at 531.

[46] 484 U.S. at 531.

[47] ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.[48] An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.[49]

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.[50] The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.[51] An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.[52] In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[53]

Discussion

The gravamen of the SOR under Guideline B is whether Applicant's connections to Russia, and to a lesser extent China, should disqualify him from access to classified information. Under Guideline B for foreign influence,[54] the suitability of an applicant may be questioned or put into doubt due to foreign contacts and interests. The overall concern is:

> Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.[55]

[48] Directive, ¶ 3.2.

[49] Directive, ¶ 3.2.

[50] ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

[51] Directive, Enclosure 3, ¶ E3.1.14.

[52] Directive, Enclosure 3, ¶ E3.1.15.

[53] Directive, Enclosure 3, ¶ E3.1.15.

[54] AG ¶¶ 6, 7, and 8 (setting forth the concern and the disqualifying and mitigating conditions).

[55] AG ¶ 6.

Given the evidence of Applicant's foreign connections, I considered the following disqualifying and mitigating conditions under Guideline B as most pertinent:

> AG ¶ 7(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
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> AG ¶ 7(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;
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> AG ¶ 8(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions of activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and
>
> AG ¶ 8(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country, is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor or the U.S. interest.

The United States has concerns about Russia and China because both are leading state intelligence threats based on their capabilities, intent, and broad operational scope. Russian intelligence services continue to target U.S. and allied personnel with access to sensitive computer network information. Russia's extensive and sophisticated intelligence operations are motivated by a high dependence on natural resources (e.g. oil), the need to diversity its economy, and the belief that the global economic system is tilted toward the United States at its expense. There are also significant human-rights problems in Russia. Based on these concerns, both Russia and China quite easily meet the heightened-risk standard in AG ¶ 7(a).

Applicant's connections to Russia are sufficient to raise a concern under Guideline B. With that said, his connections are now weakened, reduced, and lessened to the point where they are mitigated. His family ties to Russia, via his marriage, are no longer a concern. Applicant and his spouse have lived apart from each other since about January 2015, she has since became involved in another relationship, and he considers the marriage irretrievably broken with a divorce forthcoming. Likewise, his relationship with his stepson and his wife in Russia was at best distant. It is even more so now given that his marriage to his stepson's mother is effectively over. Applicant's family ties to Russia are mitigated based on a clear case of attenuation of those ties.

Applicant's connection to Russia via his acquaintance with a Russian nuclear physicist is also no longer a concern. The 1999 trip is the sole occasion when Applicant had in-person contact the physicist, and all subsequent contacts were through e-mail, telephone, exchange of photographs, etc. Applicant did not report this contact sooner because he did not realize it was a reportable matter. The contact ended more than a decade ago in about 2004, and Applicant has not traveled to Russia since 2005. Although Applicant should have been more sensitive to his obligation to report such a contact, the matter is now mitigated by the passage of time without recurrence of similar behavior.

Applicant's connection to China is also no longer a concern. Applicant lived with a Chinese national in the United States during 1999-2001, which he did not report to security officials until about 2009. This occurred when a Chinese national and her nine-year-old daughter were living with Applicant's brother at Applicant's home. Applicant did not report this contact sooner because he did not realized it was a reportable matter. Again, Applicant should have been more sensitive to his obligation to report contact with a foreign national, but this is a bit of an odd situation, and it is perhaps understandable why it did not occur to him to report. The matter is now mitigated by the passage of time without recurrence of similar behavior.

Under Guideline G for alcohol consumption, the concern is that excessive drinking often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about a person's reliability and trustworthiness.[56] In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent under Guideline G:

> AG ¶ 22(a) alcohol-related incidents away from work, such as driving 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;
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> AG ¶ 22(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;
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> AG ¶ 22(d) diagnosis by a duly qualified medical or mental health provider (e.g.) physician, clinical psychologist, or licensed clinical social worker) of alcohol use disorder;
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> AG ¶ 22(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder;
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> 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

[56] AG ¶ 21.

recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

AG ¶ 23(b) the individual acknowledges [their] pattern of maladaptive alcohol use, provides evidence of actions taken to overcome the problem, and has demonstrated a clear and established pattern of modified consumption or abstinence [per] treatment recommendations;

AG ¶ 23(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

AG ¶ 23(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.[57]

The record evidence shows Applicant has had a serious problem with alcohol since at least 1991, when he first attended an inpatient treatment program. He has since attended five more times, with alcohol always the main source of his problem. He has been a heavy drinker who at one time in the past drank as much as 36 beers over the course of a weekend.[58] He also had the alcohol-related incident while traveling in Russia in 2005, which resulted in his detention by local police. He last went through an inpatient treatment in 2015 and then abstained from alcohol for about two years until June 2017, when he resumed drinking at the occasion of a wedding. The June 2017 date is also significant because it falls between the initial hearing in April 2017 and the latter session in July 2017. Applicant knows without a doubt that alcohol poses a serious risk for him, yet he resumed drinking while this case was in recess between sessions. There is not sufficient evidence to mitigate the concern based on his long-standing, years-long battle with alcohol. What is missing here is evidence that demonstrates a clear and established pattern of modified consumption or abstinence, and abstinence is probably more appropriate given the past diagnosis of alcohol dependence. Applicant has, at times, made good progress in addressing his issues with alcohol, but he has more work to do before he can be considered an acceptable security risk.

[57] The current version of Guideline G uses the term "alcohol use disorder," while previous versions of Guideline G used the terms alcohol dependence and alcohol abuse. It is my understanding that the current version of the DSM uses the term alcohol use disorder, which incorporates the terms alcohol dependence and alcohol abuse. Regardless of the terminology, my analysis under Guideline G would be the same.

[58] Exhibit 9 at 2.

Under Guideline H for drug involvement and substance misuse, the concern is that:

> [t]he illegal use of controlled substances, to include the misuse of prescriptions and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are use 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. . .[59]

In addition to the above matters, I note that the Director of National Intelligence (DNI) issued an October 25, 2014 memorandum concerning adherence to federal laws prohibiting marijuana use. In doing so, the DNI emphasized three things. First, no state can authorize violations of federal law, including violations of the Controlled Substances Act, which identifies marijuana as a Schedule I controlled drug. Second, changes to state laws (and the laws of the District of Columbia) concerning marijuana use do not alter the national security adjudicative guidelines. And third, a person's disregard of federal law concerning the use, sale, or manufacture of marijuana remains relevant when making eligibility decisions for sensitive national security positions.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions:

> AG ¶ 25(a) any substance abuse;
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> AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
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> AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
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> AG ¶ 26(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 of revocation of national security eligibility.

[59] AG ¶ 24.

I considered the totality of Applicant's drug involvement and substance misuse as detailed above in the findings of fact. Overall, his illegal drug use is not recent and is in the distant past, because he last used cocaine in the summer of 2006 and he last used marijuana in about 2003 and 2004. His other illegal drug use is more dated. Nevertheless, his repeated illegal drug use while holding a security clearance is too serious to be mitigated. This is especially so given that his illegal drug use often coincided with his use of alcohol, which has recently resumed. I am not persuaded that Applicant's illegal drug use is firmly in the past and will not recur.

Under Guideline E, the central concern is conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations may raise questions about a person's reliability, trustworthiness, and ability to protect classified of sensitive information.[60] In addition, of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Given the evidence here, I considered the following disqualifying and mitigating conditions as most pertinent:

> AG ¶ 16(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental-health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;
>
> AG ¶ 16(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;
>
> 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; and
>
> AG ¶ 17(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.

[60] AG ¶ 15.

The amended SOR allegations under Guideline E are twofold. The first allegation is that Applicant deliberately failed to disclose the full extent of his illegal drug use during an official background investigation when he was interviewed in 1988. The second allegation is a cross allegation to the matters in SOR ¶¶ 1.c and 1.d, 2.a-2.c, and 3.a-3.e.

The former is mitigated by the passage of time (about 30 years) and Applicant's subsequent disclosures of the full extent of his illegal drug use over a period of years. The latter is mitigated but only with respect to SOR ¶¶ 1.c and 1.d, which concern Applicant's unreported contact with the Russian nuclear physicist and the Chinese national. Those matters are mitigated using the same rationale as discussed above under Guideline B. The matters in SOR ¶¶ 2.a-2.c and 3.a-3.e concern Applicant's long-standing history of excessive consumption of alcohol and his history of illegal drug use. Those matters also raise independent judgment and reliability concerns under Guideline E, and they are decided against Applicant using the same rationale as discussed above under Guidelines G and H.

To sum up, it is far too soon to tell if Applicant's history of excessive consumption of alcohol as well as his history of illegal drug use are both safely in the past and will not recur. Taken together, these matters reflect a recurring pattern of substance abuse over many years. It is also significant that much of the illegal drug use occurred after Applicant was granted a security clearance. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that Applicant did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline G:	Against Applicant
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline H:	Against Applicant
Subparagraphs 3.a-3.e:	Against Applicant
Paragraph 4, Guideline E:	Against Applicant
Subparagraph 4.a:	For Applicant
Subparagraph 4.b:	Against Applicant (in part)

Conclusion

It is not clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge