



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04148

Appearances

For Government: Nicholas T. Temple, Esquire, Department Counsel

For Applicant: *Pro se*

10/11/2018

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement and substance misuse, and personal conduct. Eligibility for a security clearance is denied.

Statement of the Case

On August 26, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On March 13, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), (December 10, 2016), *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a notarized statement, dated April 3, 2018, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on June 14, 2018, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on June 19, 2018. His response was due on July 19, 2018. Applicant timely submitted several documents in response to the FORM, and they were admitted as Applicant exhibits without objection. The case was assigned to me on September 11, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments all of the factual allegations pertaining to drug involvement and substance misuse of the SOR (SOR ¶¶ 1.a. through 1.g.), but his comments related to the factual allegations pertaining to personal conduct were not responsive, and he failed to specifically "admit" or "deny" those allegations. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a defense contractor. He has been serving as painter with his current employer since September 2003. He completed his high school education through a General Educational Development (GED) test in 2000. He has never served with the U.S. military. He has never received a security clearance. Applicant was married sometime after August 2016 to the woman with whom he had been cohabiting since December 2011. He has one son, born in 2012.

Drug Involvement and Substance Misuse, and Personal Conduct

Applicant was a substance abuser who was both psychologically and physically opioid dependent. His choice of illegal or unauthorized substances was marijuana; Vicodin (hydrocodone bitartrate and acetaminophen) for which a prescription is required; Percocet (oxycodone and acetaminophen), for which a prescription is required; heroin (an illegal, highly addictive drug processed from morphine); and Suboxone (buprenorphine and naloxone), used to reduce symptoms of opiate addiction and withdrawal, for which a prescription is required.

During the period 2004-05, Applicant was motivated to sell marijuana because his friend was making a lot of money selling marijuana and he asked Applicant to sell it as well. Applicant knowingly and voluntarily started selling marijuana to friends and associates, making \$500 per week, including \$350 at work. In addition, supposedly to cope with personal issues, Applicant smoked marijuana recreationally.¹ On September 25, 2005, he was arrested and charged with possession of marijuana – 1st offense, a misdemeanor.² Upon his conviction, he was sentenced to community service and fined.³ Because Applicant failed to complete his community service by a particular date, on October 31, 2006, he was arrested on a bench warrant.⁴ Applicant admitted that he was uncooperative and belligerent with the police, and he lied when he told them his mother was a judge and his father was a police chief. Neither the second arrest nor the results of that arrest were alleged in the SOR or indicated in the case file.⁵

During the period December 2013 through December 2014, Applicant started abusing opiates without a prescription. He obtained Vicodin from a co-worker for free for a brief period, because that co-worker wanted someone to use drugs with him, and then, because Vicodin gave Applicant more energy at work, he started frequently purchasing the substance for \$10 per pill. He took from 1 to 15 Vicodin pills per day. At some point, although he sought to stop using Vicodin, he could not stop because he would get sick, nauseous, sweat, feel cold, and shake when he stopped taking it. After about three months, Vicodin was no longer working, so Applicant switched to another drug.⁶

Another co-worker was able to furnish him with Percocet. Applicant purchased the Percocet from his co-worker for cash, and his daily use of Percocet over a four-month period increased to as many as 20 Percocet pills. Because of such drug abuse, Applicant acknowledged that he was opioid dependent. In addition, because of the costs involved in obtaining those controlled drugs without a prescription, he experienced financial

¹ Item 5 (Personal Subject Interview, dated March 27, 2017), at 10-11; Item 2 (Answer to the SOR), at 2.

² Item 4 (Federal Bureau of Investigation (FBI) Identification Record, dated September 16, 2016).

³ Item 5, *supra* note 1, at 10.

⁴ Item 4, *supra* note 2; Item 5, *supra* note 1, at 10.

⁵ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unalleged arrest and other misconduct will be considered only for the five purposes listed above.

⁶ Item 5, *supra* note 1, at 12.

problems.⁷ Hoping to resolve his financial difficulties, he searched for and found a cheaper substitute.

That cheaper substitute turned out to be heroin. Turning to a long-time friend whom he knew as a drug dealer, Applicant purchased heroin for \$5 per “hit, bag, or bundle” for \$40 to \$50 per gram. The heroin caused him to fall asleep. Once again, recognizing that he was an addict, he finally informed his girlfriend and decided to seek rehabilitation.⁸

In December 2014, Applicant voluntarily sought treatment at a substance abuse treatment center. He admitted that he lied to the staff about the length of his dependency period in order to get admitted into the program. During a nearly one-week period in December 2014, he received detoxification and a fast methadone taper treatment⁹ from a not-for-profit nationally recognized and accredited behavioral healthcare provider, specializing in the treatment and prevention of substance use disorders and co-occurring substance use and mental health disorders. The specifics of the treatment portion of the program, as opposed to the detoxification and fast methadone taper treatment portion, were not described. He was sent home with no medications, but with a referral to a Suboxone maintenance program. Applicant left the center thinking it was all the treatment he needed, so he never followed up on the referral. However, he felt so sick that he

⁷ Item 5, *supra* note 1, at 12.

⁸ Item 5, *supra* note 1, at 12.

⁹ Agonist and Antagonist therapies are effective evidence-based options in the medical treatment of drug addiction. An agonist drug attaches itself to receptors in the brain, which produces a chemical reaction. For example, heroin is an opioid agonist. It binds to opioid receptors that control pleasure and pain, the result being a feeling of euphoria and well-being. Other examples of opioid agonists, sometimes referred to as “full agonists,” are oxycodone, morphine and opium. Methadone is a full agonist used in the treatment of opioid addiction.

In agonist therapy, patients are prescribed agonist drugs that attach themselves to the same receptors as the addicted substance. The agonist drug creates a similar high, essentially impersonating the more addictive drug. For instance, buprenorphine - a “partial agonist” - is commonly used in the treatment of heroin addiction, for while it binds tightly to opioid receptors in the brain, it does not have a “full agonist” effect like heroin. Because there is a ceiling effect to its action, patients using the medication do not develop a tolerance, but do become physiologically dependent. Agonist therapy can help relieve painful withdrawal and continuous cravings, allowing patients to focus on therapy and long-term recovery. The downside to agonist drugs is that patients can develop a physiological dependence and a tolerance to the medication during their treatment.

While antagonist drugs also bind to receptors in the brain, there is not a similar high to the addictive drug. Antagonist drugs are used to block addictive drugs from activating the brain’s receptors. Antagonist therapy has several benefits. Patients receiving antagonist drugs, such as Naltrexone, which is used in the treatment of opioid addiction, do not develop a tolerance to the medication. Additionally, antagonist drugs are not addictive in and of themselves. Naloxone is often used to stabilize patients suffering from opiate overdose. Antagonist therapy does not alleviate the craving for the addictive substance. See <https://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/>; see also <https://www.inspiremalibu.com/agonist-antagonist-therapy-treatment/>.

thought he was dying.¹⁰ He then turned to his girlfriend's father – a former addict – for help. That individual furnished Applicant Suboxone, without a prescription for Applicant, during the period December 2014 through March 2016, to ween himself off heroin. Eventually, not feeling right about the situation, Applicant again sought professional help with his opioid dependency.¹¹

The time-line Applicant supplied for his next opioid dependency treatment is somewhat inconsistent. In March 2017, he told the investigator with the U.S. Office of Personnel Management (OPM) that he enrolled in a Suboxone treatment facility in March 2016, and that he attended treatment for his drug addiction on a monthly basis, attended meetings, and that he routinely underwent a urinalysis.¹² A physician with the treatment center stated that treatment commenced on May 10, 2016, and that Applicant was administered a urinalysis test on a monthly basis.¹³ However, the Partial Qualitative Drug Results (the urinalysis analysis results) furnished twice by Applicant – which he said constituted all of his drug tests – were only for August 28, 2017; September 25, 2017; October 19, 2017; November 16, 2017; January 11, 2018; and February 7, 2018. Those tests were all negative for the targeted drugs, with the exception of Suboxone.¹⁴ The SOR alleged that the treatment commenced in September 2016, and Applicant admitted that allegation. The unresolved question is when did Applicant actually commence his Suboxone treatment at the facility: March 2016; May 2016; September 2016; or August 2017?

During his OPM interview, Applicant claimed to be attending Narcotics Anonymous (NA) meetings two or more times per week,¹⁵ but he did not submit any documents to furnish any explanation about the specifics of his particular activities with respect to the program.

While not alleged in the SOR, Applicant has engaged in a number of activities, and he has been involved in a number of incidents at work and elsewhere, which reflect an unwillingness to comply with the law, as well as rules and regulations: in January 2010, he was suspended for three days without pay for a safety violation; on an unspecified date, he was suspended for five days without pay for a second safety violation; in October 2011, he was ticketed by police for driving on a suspended license, for which he was found guilty; in January 2016, he received a written warning for briefly exiting the

¹⁰ Item 5, *supra* note 1, at 12; Letter from Registered Nurse, undated, attached to Applicant's Response to the FORM.

¹¹ Item 5, *supra* note 1, at 13.

¹² Item 5, *supra* note 1, at 13.

¹³ Letter from Medical Doctor, dated March 26, 2018, attached to Applicant's Response to the FORM.

¹⁴ Partial Qualitative Drug Results, various dates, attached to Applicant's Response to the FORM; Item 2, *supra* note 1, at 1-2.

¹⁵ Item 5, *supra* note 1, at 13.

workplace grounds in violation of a stated rule; and in March 2017, he received a verbal warning for using his cell phone after his break time in violation of a stated rule.¹⁶

Character References

Applicant's area superintendent in the workplace has known, and worked with, Applicant for 13 years in multiple departments across the facility. He observed Applicant's consistent delivery on difficult assignments, regardless of the deadlines or pressure, and he noted that Applicant has been entrusted with increasing levels of responsibility. He recommends Applicant for an unspecified position.¹⁷ Applicant's pastor, family members, and friends, all commented on his hard work, trustworthiness, integrity, spiritual and emotional growth, and family orientation.¹⁸

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."¹⁹ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."²⁰

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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,

¹⁶ Item 5, *supra* note 1, at 6-8.

¹⁷ Character Reference, undated, attached to both Applicant's Answer to the SOR and his Response to the FORM.

¹⁸ Character References, various dates, attached to both Applicant's Answer to the SOR and his Response to the FORM.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁰ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”²¹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.²²

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”²³

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”²⁴ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

²¹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²³ *Egan*, 484 U.S. at 531.

²⁴ See Exec. Or. 10865 § 7.

Analysis

Guideline H, Drug Involvement and Substance Abuse

The security concern relating to the guideline for Drug Involvement and Substance Abuse is set out 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.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

The guideline notes several conditions under AG ¶ 25 that could raise security concerns in this case:

- (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
- (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.

Applicant admittedly possessed, used, and sold marijuana; purchased and used Vicodin and Percocet without a prescription; used Suboxone without a prescription; and purchased and used heroin. He was arrested and convicted of possession of marijuana. He was diagnosed as opioid dependent by two separate qualified medical or mental health professionals. AG ¶¶ 25(a) 25(c), and 25 (d) have been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) 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;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(b) partially applies and AG ¶ 26(d) minimally applies, but no other mitigating conditions apply. While Applicant has been candid in reporting his history of substance abuse, his detoxification efforts, and his eventual enrollment in a Suboxone maintenance program, there are other factors that minimize the overall significance of these mitigating conditions. Applicant identified two co-workers who supplied him with opioids without prescriptions, as well as the individual who supplied him with Suboxone for a lengthy period, also without a prescription. There is no evidence that the co-workers are no longer employed by the same employer, and there is evidence that Applicant's Suboxone-supplier is now his father-in-law. While Applicant claimed to have no intention to use illegal substances or non-prescribed controlled medications in the future, it should be noted that he did not submit 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.

With respect to the satisfactory completion of a prescribed drug treatment program, there is evidence that Applicant repeatedly participated in the detoxification process, but there is minimal evidence of completion of a drug treatment program, or anything about

those programs. Applicant's initial detoxification program was completed, but he chose to ignore the recommended referral and ended up essentially relapsing by seeking a substance which was not yet prescribed for him. Applicant's current status is tenuous at best, for while he is using one prescribed medication to reduce his addiction to other illegal substances, if he stops taking Suboxone without medical approval, he may return to the illegal substances. Furthermore, while Applicant's purported abstinence from illegal or unauthorized substances is to be encouraged, that period remains unclear as discussed above. He either stopped such abuse in March 2016; or May 2016, but in either case, Applicant's period of abstinence is too brief to establish a confidence that a relapse will not soon occur. Under the circumstances, Applicant's actions continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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 also includes examples of some conditions that could raise security concerns under 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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

- (2) any disruptive, violent, or other inappropriate behavior;

- (3) a pattern of dishonesty or rule violations; and

- (4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

- (2) while in another country, engaging in any activity that is illegal in that country;

- (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

My discussions related to Applicant's Drug Involvement and Substance Misuse, are adopted herein. As noted above, Applicant admittedly possessed, used, and sold marijuana; purchased and used Vicodin and Percocet without a prescription; used Suboxone without a prescription; and purchased and used heroin – all activities that were

against the law. He was arrested and convicted of possession of marijuana. He was diagnosed as opioid dependent by two separate qualified medical or mental health professionals. He continues to maintain a relationship with his father-in-law, his Suboxone-supplier for a lengthy period, and any relationship with his two opioid-supplier coworkers is not known as it has not been described. AG ¶¶ 16(e) and 16(g) have been established. None of the remaining disqualifying conditions apply, especially AG ¶¶ 16(c) and 16(d), essentially because Applicant's conduct in several different adjudicative areas are sufficient for an adverse determination under those other guidelines.

The guideline also includes one condition under AG ¶ 17 that could mitigate security concerns arising from Personal Conduct:

(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.

AG ¶ 17(d) minimally applies. As noted above, after abusing two different opioids, marijuana, heroin, and Suboxone, Applicant finally sought treatment, and he was diagnosed as opioid dependent by two separate qualified medical or mental health professionals. He had one relapse. While the detoxification process was seemingly satisfactorily completed, the remaining aspects of the treatment programs are not known, and only the Suboxone maintenance program has been described. As noted above, the maintenance program does not alleviate the craving for the addictive substance. Under the circumstances, Applicant's actions continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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 the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have

evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁵

There is some evidence mitigating Applicant's conduct. Applicant is a 36-year-old employee of a defense contractor. He has been serving as painter with his current employer since September 2003. He is married, and he has one son. Recognizing that he was a drug addict, Applicant voluntarily sought treatment at a substance abuse treatment center where he received detoxification and a fast methadone taper treatment. After a relapse, he was enrolled in a Suboxone maintenance program, and it appears that he is still in that program. He has not used marijuana in over a decade; used heroin or abused Vicodin or Percocet since December 2014; or used Suboxone without a prescription since sometime in 2016.

The disqualifying evidence under the whole-person concept is more substantial. Applicant admittedly possessed, used, and sold marijuana; purchased and used Vicodin and Percocet without a prescription; used Suboxone without a prescription; and purchased and used heroin. He was arrested and convicted of possession of marijuana. He was diagnosed as opioid dependent by two separate qualified medical or mental health professionals.

As noted above, in addition to his Drug Involvement and Substance Misuse concerns, although not alleged in the SOR, Applicant has also engaged in a number of activities, and he has been involved in a number of incidents at work and elsewhere, which reflect an unwillingness to comply with the law, as well as rules and regulations: two safety violations; driving on a suspended license; and violations of workplace stated rules, as recently as 2016 and 2017.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his Drug Involvement and Substance Abuse concerns, and his Personal Conduct issues. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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:	AGAINST APPLICANT
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Subparagraphs 1.a. through 1.g.:	Against Applicant
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Paragraph 2, Guideline E:	AGAINST APPLICANT
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²⁵ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Subparagraph 2.a.:

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge