



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



Appearances

For Government:
Nicole A. Smith, Esquire, Department Counsel

For Applicant:
Alan Edmunds, Esquire
The Edmunds Law Firm

04/08/2025

Decision

ROSS, Wilford H., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations). He mitigated the security concerns under Guidelines I (Psychological Conditions), J (Criminal Conduct), and H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

Statement of the Case

On July 31, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines I, J, H, E and F. 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR in writing (Answer) on October 2, 2023, attaching Applicant Answer Exhibits A through N. In his Answer he requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 8, 2024. The case was assigned to me on February 16, 2024. The Defense Office of Hearings and Appeals (DOHA) issued an initial Notice of Hearing on April 11, 2024. Hearings in this case were held on August 27, 2024; and September 3, 2024. The Government offered Government Exhibits 1 through 16, which were admitted without objection. The Government also asked that I take administrative notice of certain extracts from the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5). Applicant had no objection and the extracts are admitted into the record as Hearing Exhibit I. (August 27, 2024 transcript at 20-22 (8/27/24 Tr.).) Applicant testified on his own behalf and submitted Applicant Exhibits A through E, which were admitted without objection. He requested that the record remain open for the receipt of additional documentation. He submitted Applicant Exhibits F and G in a timely fashion, and they were admitted without objection. DOHA received the transcript of the September 3, 2024 hearing (Tr.) on September 13, 2024. All citations in this decision are to this transcript unless otherwise indicated. The record closed on October 11, 2024.

Findings of Fact

Applicant is 40 years old, has a partner, and one child with his partner. He had been married once before. He has a master's degree. He has been employed by a defense contractor as a role player since April 2021. He has prior military experience in the United States Marine Corps. He received an Honorable Discharge for his service. (Government Exhibit 1 at Sections 12, 13A, and 18; Applicant Exhibits I, K, L, and M; 8/27/24 Tr. at 7-8.)

Applicant was injured during his military service while on duty overseas in a combat zone in 2009. He was hospitalized and eventually medically retired due to his injuries. (Applicant Exhibit H; Tr. 11.)

During his hospitalization and convalescence he was prescribed Oxycodone. By 2014 he admits that he was addicted to the drug. This addiction continued until 2018, with one subsequent slip in 2020. As further described below, he has been drug free since approximately June 2020. (Tr. 11-18.)

Paragraph 1 (Guideline I, Psychological Conditions)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that may show emotional, mental or personality conditions that can impair judgment, reliability, or trustworthiness. He admitted allegations 1.a, 1.c, and 1.d with explanations. He admitted in part and denied in part allegation 1.b. He admitted with clarifications allegations 1.e and 1.f. He denied allegation 1.g.

Allegations 1.a, 1.b, 2.e, and 3.c all relate to the same fact situation. On November 5, 2016, Applicant was involved in a serious automobile accident. During the investigation ten pounds of marijuana was found in his car. He denied that the marijuana was his. Rather, he stated the marijuana belonged to a then-friend who ran a marijuana farm and dispensary. Applicant was subsequently charged with (1) Felony Possession of Marijuana for Sale, (2) Transportation of Marijuana for Sale, (3) Misdemeanor Driving Under the Influence (DUI); and (4) Driving with a Suspended License resulting from a prior DUI conviction. (Government Exhibit 8; Tr. 42-48, 65.)

As a result of his arrest Applicant attended a seven-day detoxification program at a treatment center (TC 1) that was contracted by the Department of Veterans Affairs (VA). During that hospitalization he was diagnosed with Oxycodone Use Disorder, Posttraumatic Stress Disorder (PTSD), and Unspecified Depressive Disorder. After his stay at TC 1 he returned to the VA and continued outpatient treatment. (Government Exhibit 11 at 1-16; Tr. 17-18, 46-47.)

1.c. Applicant received outpatient drug treatment for his addiction to Oxycodone at various facilities of the VA from approximately January 2017 to at least May 2019. He also received treatment for PTSD and his depression. During his treatment he tested positive for Oxycodone several times. He freely admits that he had difficulties with his addiction during this time. The VA continued to follow him during periods of treatment in non-government facilities. (Government Exhibit 10 at 159-723; Tr. 47-53.)

1.d and 1.e. In November 2017, during a period Applicant was having serious issues with Oxycodone, he again attended TC 1 for detoxification. After the week-long detoxification period he entered inpatient treatment at the same location, which was supposed to last 30 days. He did not complete the program and left against medical

advice. According to Applicant, there was a lot of drug use at the facility and he did not find the program helpful to his recovery. (Government Exhibit 11 at 18-51; Tr. 50-52.)

1.f. Applicant stated that he stopped using illegal drugs after the incident discussed in 2.f, below. In June 2020, while in another state and during the COVID-19 lockdown, he had a slip and used Oxycodone. In June 2020 he entered TC 2, which is not in his home state. He successfully completed inpatient treatment at TC 2. (Applicant Answer Exhibit C; Tr. 58-62, 105-106.)

1.g. Applicant denied this allegation that stated he failed to follow recommended treatment advice and had not abstained from using Oxycodone. He stated in his Answer, "I deny that all attempts were not successful. I have succeeded in the 12-step meetings I attended, and have not used Oxycodone since 2020." He expresses a credible intent not to use Oxycodone or other illegal drugs in the future. He has found, and is using, other means to control his pain. (Applicant Exhibit A; Tr. 62-63.)

Applicant obtained a psychological assessment in June 2024. The psychologist prepared a report, Applicant Exhibit A. In that report the psychologist described in detail Applicant's struggles to control his drug use, PTSD, and depression. He makes the following conclusions:

IMPRESSION: [Applicant] has a significant history of opioid dependence that began after he suffered from significant injuries while deployed as a Marine. He admitted to regular abuse of these opioids that included him purchasing them from street dealers. [Applicant] attempted to get sober several times and was not successful until he had a near-death experience in 2018. This incident caused him to become highly motivated to become sober and he was eventually able to achieve that goal in 2020. [Applicant] denied any relapses since 2020 and is in a position that conducts random drug tests. None of his tests have resulted in positive readings. According to the best available evidence, [Applicant] does not meet criteria for any clinical and substance use disorders at this time. The diagnoses listed below reflect what he likely suffered from during the height of his dependency, while underscoring the fact that they are in a state of remission.

DIAGNOSES:

Posttraumatic stress disorder, <u>resolved</u>	(F43.10)
Opioid use disorder, <u>in sustained remission</u>	(F11.20.)

PROGNOSIS: [Applicant's] judgment, reliability, or trustworthiness do not currently appear to be impaired by any psychological defect, substance use disorder, or underlying condition at this time. There is no evidence of him suffering from any functional impairment caused by psychological issues. [Applicant's] stability will be contingent upon his continued engagement with his healthy behaviors, complete abstinence from narcotics, and his willingness to seek assistance if his condition worsens.

Applicant's treating physician at the VA also submitted a letter. He states, "[Applicant] has been voluntarily adherent to treatment and has been attending appointments. He has been in good spirits and participating eagerly in treatment." (Applicant Exhibit C.)

Paragraph 2 (Guideline J, Criminal Conduct)

The Government alleged in this paragraph that Applicant is not eligible for access because he has engaged in criminal conduct. Applicant admitted allegations 2.b, 2.c, 2.d, and 2.f. He admitted allegation 2.e with a clarification. He denied allegation 2.a with a clarification.

2.a. In December 2012 Applicant was involved in a physical altercation with a man who Applicant believed had touched his then-wife inappropriately. He states that he was charged with a felony in the third degree, not second degree as alleged in the SOR. "[T]he court mandated that I attend anger management classes, pay a fine, and write an apology letter as part of the resolution. After completing those requirements, the charges were dropped." FBI records in the file confirm his statements. (Government Exhibit 4; Answer; Applicant Answer Exhibit F; Tr. 28-30.)

2.b. Applicant admitted that he was arrested in August 2012 for DUI. He pled guilty and was placed on probation until October 2017. (Government Exhibit 5; Tr. 19-21.)

2.c. Applicant admitted that he was charged with driving on a suspended license in January 2014. At that time he was on probation for the allegation 2.b offense. (Government Exhibit 6; Tr. 30.)

2.d. Applicant admitted that he was charged with driving on a suspended license in December 2015. At that time he was on probation for the allegation 2.b offense. He was put on summary probation for 24 months, ordered to pay fines, and refrain from driving with any measurable amounts of drugs or alcohol in his blood. (Government Exhibit 7; Tr. 34.)

2.e. See the discussion under allegations 1.a and 1.b, above.

2.f. Applicant was involved in a serious automobile accident on October 18, 2018. He had overdosed, crashed his car, and was nonresponsive when paramedics arrived. He had to be revived with Narcan. He was charged with Driving on a Suspended License, and Possession of a Controlled Substance. In September 2020 he was sentenced to serve 30 days in jail, pay fines, and was put on summary probation for 36 months. The probation ended in September 2023. (Government Exhibit 9; Applicant Answer Exhibits D and E; Tr. 54-57, 65-67.)

Paragraph 3 (Guideline H, Drug Involvement and Substance Misuse)

The Government alleged in this paragraph that Applicant is not eligible for access because he has used illegal drugs. He admitted all the allegations under this guideline with explanations.

3.a. Applicant used Oxycodone from about 2009, after he was injured while on active duty, to October 2018, after the accident described in allegation 2.f, above. He became addicted to the drug in approximately 2014. He stopped until June 2020, when he had a slip. He has not used Oxycodone since June 2020. He submitted a signed statement of intent not to use Oxycodone or any other illegal drug in the future. He also submitted recent negative urinalysis tests that were performed by the VA in connection with his ongoing treatment. (Applicant Exhibits A and G; Tr. 10, 23-28, 31, 64-65.)

3.b. Applicant admitted picking marijuana for a friend who owned a legal dispensary. He stated that his involvement in the marijuana farm was very short-lived, since he does not use marijuana. The friend was the person involved in the accident described under allegation 1.a, above. He further stated that he never told a medical provider at the VA in January 2017 that he was a marijuana farmer. He argues that any statements like this were exaggerations on his part. (Government Exhibit 10 at 544, 690, 769; Tr. 36-42.)

3.c. See the discussion under allegations 1.a and 1.b, above.

Paragraph 4 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness, or unreliability. Applicant admitted allegations 4.a through 4.e, 4.g through 4.k, and 4.m under this guideline. He denied allegations 4.f and 4.l.

Applicant filled out his e-QIP on July 6, 2021. (Government Exhibit 1.) Allegations 4.a through 4.g are related to that questionnaire. His testimony about this questionnaire was often confusing and contradictory.

4.a. Section 26 of that questionnaire concerns his financial situation. Two subsections ask whether, within seven years of filling out the questionnaire, Applicant had bills or debts turned over to a collection agency; or had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? He answered the questions, "No." As described under Paragraph 5, below, Applicant had past-due debts that had been turned over to collection agencies and his accounts had been cancelled by several creditors. These were false answers to relevant questions about his financial situation.

Applicant stated that his false answers to this particular question were unintentional. However, he also stated that he was embarrassed about his delinquencies. He testified that he told the Government investigator who interviewed him in October 2021 about his delinquencies. The Report of Investigation (ROI) prepared at that time only shows one possible delinquent debt. (Tr. 80-86; Government Exhibit 2.)

4.b. Section 22 of the same questionnaire concerns Applicant's police record. One subsection asks, "Have you **EVER** been charged with any felony offense." (All emphasis in original.) He answered, "No." This was a false answer to a relevant question about his police record since he had been arrested for a felony as set forth in allegation 2.a. He testified that he had forgotten about this charge and believed it was only a misdemeanor. (Tr. 86-88.)

4.c. A different subsection of Section 22 of the same questionnaire asks Applicant, "Have you **EVER** been charged with an offense involving alcohol or drugs?" (All emphasis in original.) He answered, "No." This was a false answer to a relevant question about his police record since he had been charged with drug and alcohol offenses as set forth in allegations 2.b and 2.e in 2012 and 2016. He had earlier in the e-QIP admitted the allegation 2.f incident from 2018. He testified that he knew he had additional charges but did not know the dates. (Tr. 88-90.)

4.d. A third subsection to Section 22 of the same questionnaire asks Applicant whether he had been on parole or probation within seven years of the current date. He stated, "No." This was a false answer to a relevant question about his police record since he was on probation at the time he completed the questionnaire. He testified that he thought he was no longer on probation at the time of the questionnaire. While he had previously admitted the allegation 1.f incident, he concealed the fact of his probation, which had only begun months before. (Tr. 90-91; 106-107.)

4.e. Section 23 of the same questionnaire concerns Applicant's illegal use of drugs and drug activity. One subsection asks him whether he had used illegal drugs or controlled substances within the last seven years. He answered that he had used Oxycodone from September 2016 to January 2019. This was a false answer to a relevant question about his drug use, since he had used Oxycodone from at least 2009 through June 2020. He testified that he did not intend to deceive the Government by his responses. (Tr. 91-92.)

4.f. A different subsection of Section 23 of the same questionnaire asks Applicant whether, within the last seven years, he had "been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of any drug or controlled substance?" Applicant answered, "No."

Applicant argues that, while he was briefly involved in his friend's dispensary and farm, he was never a marijuana farmer and did not sell marijuana at any time. There is a factual dispute about this allegation, specifically whether Applicant had an intent to deceive. This dispute cannot be resolved given the current state of the record. This allegation is found for Applicant. (Tr. 92.)

4.g. Another subsection of Section 23 of the same questionnaire asks Applicant, "Have you **EVER** voluntarily sought counseling or treatment as a result of your use of a drug or controlled substance?" (All emphasis in original.) Applicant answered, "Yes," and described treatment for approximately four months in 2019 with a therapist. This was a false answer to a relevant question about his treatment in that he minimized the years of treatment with the VA or his three hospitalizations.

Applicant argues that he knew he had been in treatment longer, but did not know the exact dates. He also stated he could not recall why he did not set forth on the e-QIP the treatment discussed under allegation 1.f, above. (Tr. 93-95.)

Applicant was interviewed by an authorized investigator of the US Department of Defense on October 12, 2021. As stated, a ROI was prepared by the investigator. Applicant reviewed the ROI and confirmed its accuracy on April 11, 2023. Allegations 4.h through 4.k are related to that interview. (Government Exhibit 2.)

4.h. During the interview Applicant discussed his use of Oxycodone. He told the investigator that he had begun using Oxycodone while in the military and had not used the drug since 2019. There is some dispute as to when he began using Oxycodone, but he has admitted using the drug one time in June 2020. Applicant states that he was not trying to hide anything with his false answer. (Government Exhibit 2 at 7; Tr. 96-97.)

4.i. During the interview Applicant also discussed his drug treatment. He stated that he had received treatment in 2014 and again in 2019, as stated in his e-QIP. He did not volunteer all the treatment he had as described in allegations 1.a through 1.f. Applicant testified that it was not his intent to conceal anything from the Government about his treatment. (Government Exhibit 2 at 7; Tr. 97.)

4.j. During the interview Applicant was asked about incidents involving driving under the influence. He did not admit the 2012 arrest for DUI set forth under allegation 2.b, above, and had to be confronted with the facts. He stated during the interview that this was an unintended oversight based on a misreading of the question. (Government Exhibit 2 at 8; Tr. 98.)

4.k. During the interview Applicant was asked if he was currently on parole or probation. He did not tell the interviewer that he was currently on probation for the arrest set forth under allegation 2.f, above. He maintains that was an innocent mistake and was not done with the intent to deceive. He also testified that he fulfilled all of the court requirements after every one of his arrests. (Tr. 98-99, 106-107.)

4.l. Applicant was propounded a set of interrogatories concerning his drug involvement. He answered and signed them on April 11, 2023. Section II of the interrogatories asked him about the extent of his drug use. He answered that he used Oxycodone from October 2015 through June 2020, using one pill three times a day. This answer was false because it understated both the time frame when he was using the drug, and the amount he was taking during that time. Applicant maintained that it was not his intent to deceive the Government. (Government Exhibit 2 at 15; Tr. 100-103.)

4.m. Applicant was propounded a separate set of interrogatories that he signed on May 18, 2023. He was asked several questions about his alleged involvement in marijuana farming. He stated that he had never maintained a marijuana farm. Instead, as previously stated, the farm belonged a friend who owned a dispensary. He further stated he never otherwise grew, sold, or made money from marijuana. (Government Exhibit 3 at 2; Tr. 103-104.)

Applicant has adamantly stated he had minimal involvement with marijuana farming. He no longer associates with the person who ran the dispensary. There is a factual dispute about this allegation, specifically whether Applicant had an intent to deceive. This dispute cannot be resolved given the current state of the record. This allegation is found for Applicant.

Paragraph 5 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 5.a, 5.b, 5.d, 5.f, and 5.g under this guideline with explanations and clarifications. He denied allegations 5.c and 5.e. The Government provided credit reports of Applicant dated September 1, 2021; November 17, 2022; June 20, 2023; and August 20, 2024, supporting the existence of the debts. (Government Exhibits 13, 14, 15, and 16.) The existence of the debts is also supported by Applicant's testimony and credit reports supplied by him dated September 28, 2023; and August 6, 2024. (Applicant Answer Exhibit N; Applicant Exhibit E.)

Applicant maintains that his delinquent indebtedness was due to his drug involvement, which cost him a lot of money. He currently is financially stable. (Tr. 69-70, 76-78.)

The current status of the debts in the SOR is as follows:

5.a. Applicant admitted that he owed Bank A approximately \$21,109 for an account that has been charged off. He believes that he settled either this debt or the one in allegation 5.b with the creditor. However, he provided no documentation to support his statement. This debt has fallen off his credit report. The debt is not resolved. (Tr. 70-71, 79-80.)

5.b. Applicant admitted that he owed Bank A approximately \$20,219 for an account that has been charged off. He believes that he settled either this debt or the one in allegation 5.a with the creditor. However, he provided no documentation to support his statement. This debt has fallen off his credit report. The debt is not resolved. (Tr. 70-71, 79-80.)

5.c. Applicant denied owing a creditor \$12,378 for a past-due debt. The government's latest credit report showed that this debt has been paid. This debt is resolved. (Government Exhibit 16 at 3; Tr. 71-72.)

5.d. Applicant admitted that he owed Bank A \$6,503 for a debt that had been charged off. No payments have been made towards this debt. The debt is not resolved. (Tr. 73.)

5.e. Applicant denied that he owed \$300 for a past-due medical debt. No payments have been made towards this debt. The debt is not resolved. (Tr. 73-74.)

5.f. Applicant admitted that he owed a creditor \$4,093 for a debt that had been charged off. Applicant stated he may have made payments on this debt. No records were provided to show that this debt had been paid or resolved. The debt is not resolved. (Tr. 74-75.)

5.g. Applicant admitted that he had owed a creditor \$3,876 for a delinquent account. He provided documentation showing that he had resolved this debt in September 2023. This debt is resolved. (Applicant Exhibit B; Tr. 73-74.)

Mitigation

Applicant had a successful military career before his service-related injury. (Applicant Exhibits K, L, and M.)

Applicant is a successful employee. His evaluations show that his work meets or is above standards. (Applicant Answer Exhibit J; Applicant Exhibits D and F; Tr. 67-69.)

Applicant's best friend since the sixth grade, a surgeon, submitted a letter on Applicant's behalf. The writer has knowledge of Applicant's issues. He states:

[Applicant's] integrity is unquestionable, and he consistently strives to be the best version of himself. [Applicant's] journey of recovery and personal growth is a testament to his character and his unwavering commitment to self-improvement.

In conclusion, I wholeheartedly recommend [Applicant]. He is an extraordinary individual who has shown immense strength, dedication and compassion throughout his life. (Applicant Exhibit B.)

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline I, Psychological Conditions)

The security concern relating to the guideline for Psychological Conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Three conditions are possibly applicable:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend prescribed counseling sessions.

The guideline at AG ¶ 29 contains five conditions that could mitigate security concerns:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

There is no denying that Applicant had serious mental-health conditions in the past, primarily surrounding his Oxycodone addiction. Up until 2018 those problems were sufficient to preclude him from a clearance. However, with the exception of his single slip in 2020 during Covid, he has been drug free since 2018. In addition, Applicant's testimony, a review of his VA progress notes (Government Exhibit 10); along with the psychologist's extensive report in Applicant Exhibit A; and the letter from his current VA attending physician (Applicant Exhibit C), all show that his prior concerns, including PTSD and depression, are under control. He continues to obtain therapy from the VA. This guideline is found for Applicant.

Paragraph 2 (Guideline J, Criminal Conduct)

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply:

(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; and

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

Applicant has a history of criminal offenses, primarily involving drugs and DUI, from 2012 to 2018. The burden passes to him to mitigate these facts.

The guideline in AG ¶ 32 contains two conditions that could mitigate criminal conduct security concerns:

- (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.

Appellant has presented compelling evidence that the event in 2018 that nearly cost him his life resulted in his finally turning his life around. He is off probation, off drugs, has a good job, and is doing well. He has mitigated this guideline. Paragraph 2 is found for Applicant.

Paragraph 3 (Guideline H, Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (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; and
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional.

Applicant had a long-term addiction to Oxycodone. He was diagnosed with substance use disorder. He had several failed treatments. All of the stated disqualifying conditions have application to this case. The burden shifts to Applicant to mitigate them.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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 had a long-term drug problem that is not in issue. The period of addiction lasted from approximately 2014 through 2018, though his use began earlier and actually ended in 2020. However, he has four years of sobriety, with only one slip in 2020 during Covid. He has gotten an important job at which he is successful and respected. He has been open about his history of substance abuse. Under the particular circumstances of this case he has mitigated the Drug Involvement and Substance Misuse guideline. Paragraph 3 is found for Applicant.

Paragraph 4 (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 following disqualifying conditions are potentially applicable under AG ¶ 16:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Applicant falsified relevant facts by omission, commission, or minimization on his questionnaire, during an interview with a Government investigator, and in interrogatories propounded to him.

Applicant argues that Mitigating Condition 17(a) applies:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

His arguments that all of the alleged falsifications were the result of memory issues, or innocent mistakes, is not supported by the evidence. He further argues that he cured his falsifications during his interview with the Government investigator. In fact, the interview showed continued attempts by Applicant to minimize his misconduct. As stated, allegations 4.f. and 4.m. are found for Applicant. With those exceptions, Guideline E is found against Applicant.

Paragraph 5 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was alleged to have seven delinquent debts. AG ¶¶ 19(a) and (c) apply. The burden thereby shifts to Applicant to mitigate the adverse inference of his delinquent debts.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

With regard to allegations 5.c and 5.g, Applicant submitted documentation showing that he had paid off those debts. The remaining debts have not been resolved, nor does Applicant have a plan to resolve them. The mitigating conditions do not apply. Based on all of the available evidence, Applicant has not mitigated the security concerns of this guideline.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant 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 for a security clearance 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 has not mitigated the security concerns of his personal conduct and financial conduct. He did mitigate the concerns under the psychological conditions, criminal conduct, and drug involvement and substance misuse guidelines. He is not currently eligible for national security eligibility.

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 I: FOR APPLICANT

Subparagraphs 1.a through 1.g: For Applicant

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraphs 2.a through 2.f: For Applicant

Paragraph 3, Guideline H:	FOR APPLICANT
Subparagraphs 3.a through 3.c:	For Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a through 4.e:	Against Applicant
Subparagraph 4.f:	For Applicant
Subparagraphs 4.g through 4.l:	Against Applicant
Subparagraph 4.m:	For Applicant
Paragraph 5, Guideline F:	AGAINST APPLICANT
Subparagraphs 5.a and 5.b:	Against Applicant
Subparagraph 5.c:	For Applicant
Subparagraphs 5.d through 5.f:	Against Applicant
Subparagraph 5.g:	For 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge