DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 07-00558
SSN:	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Henry L. Young, Lay Representative

May 30, 2008

Decision on Remand

HENRY, Mary E., Administrative Judge:

By decision dated April 7, 2008, the Appeal Board remanded this case to me to issue a new decision consistent with their opinion. Based on a review of the case file, pleadings, exhibits, and remand order, I conclude that Applicant's eligibility for access to classified information must be granted.

On August 2, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline G (Alcohol Consumption) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented

by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On August 23, 2007, Applicant submitted a notarized response to the allegations. He requested a hearing.

This matter was assigned to another administrative judge on September 19, 2007. DOHA issued a notice of hearing on September 21, 2007. Due to a personal emergency, DOHA reassigned this case to me on October 10, 2007. I held a hearing on October 17, 2007. The government submitted seven exhibits (GE), which were marked and admitted into evidence as GE 1-7. Applicant submitted nine documents, which were marked and admitted into evidence as Applicant exhibits (AE) A-I.[1] I held the record open until November 16, 2007 for the submission of additional evidence. The hearing transcript (Tr.) was received on October 31, 2007. Applicant submitted three additional documents, which were marked and admitted into evidence as AE J-L without objection.

DOHA issued my decision on November 29, 2007. Department Counsel appealed it, alleging error in my findings under AG ¶¶ 22(d) and (e). The Appeal Board remand this case for further findings under Guideline G.

FINDINGS OF FACT

Applicant admitted the allegation under Guideline G, subparagraph 1.d and admitted in part and denied in part the allegation in subparagraph 1.b of the SOR.[2] Those admissions are incorporated as findings of fact. He denied the remaining allegations.[3] After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant is 57 years old. He began working for his current employer, a Department of Defense contractor, in August 1971. He currently works as a shipfitter foreman, in lead caulking and chipping. He does not work with classified documents or drawings. His clearance is needed for access only. He has 36 years of continuous service with his employer. He has held a security clearance since 1984 or 1985, without any violations for failure to follow security procedures. He completed his renewal security clearance application (SF-86) on March 28, 2006.[4]

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[1]Upon review of the hearing transcript, it appears that one government exhibit and two Applicant exhibits were received and marked, but not formally admitted into evidence. Since there were no objections to the admission of these exhibits at the hearing, the exhibits are admitted into the record.

[2]Applicant's response to the SOR, dated August 23, 2007, at 1-2.

[3]*Id*.

[4]GE 1 (Security clearance application) at 1, 4-5; Tr. at 32-34.

Applicant married in 1969. He graduated high school in 1970. He and his first wife divorced in 1984. He married his current wife in 1984. He has three children, a daughter now 37 years old and two sons, ages 33 and 32.[5]

Since beginning his employment, Applicant's employer has required him to get a physical at its health clinic as part of its program for monitoring for lead poisoning. From 1971 until 1985, these physical examinations occurred every 90 days, and included a blood pressure check, a review of fingers and gums (if the gums were turning purple, it was a sign of lead poisoning), a hand strength, and blood and urine testing. After 1985, the physical examinations and testing took place twice a year, and a complete physical examination is conducted once a year. His test results have always been negative for any serious problems. In March 2007, his urine test showed blood in his urine, but in August 2007, his urine test results were normal. The clinic at his work site refused to provide him with a copy of his medical records.[6]

Applicant began drinking beer around age 22 or 23. In June 2004, Applicant attended a family picnic, where he drank beer from early afternoon until about an hour before his departure. On his way home, the police arrested and charged him with driving under the influence (DUI) after his breathalyzer results showed a 13% level of alcohol. Applicant had never received a ticket for DUI prior to this date. He pled guilty. The court sentenced him as a first time offender, to 30 days in jail, suspended; fined him $300, $100 suspended; and restricted his driving privileges for one year, contingent upon his participation in an alcohol and substance abuse program.[7]

As directed, Applicant enrolled in an alcohol and substance abuse program. He started attending the program in October 2004 after his initial one-on-one 45 minute interview with the program director. He completed six months of weekly group counseling in April 2005 and attended 52 sessions of Alcoholics Anonymous (AA) before he completed the program in September 2005. During his time in this program, he did not drink alcohol. At no time did any counselor advise him not to drink alcohol in the future. The record contains no clinical reports from this program, and in particular, no report from this program diagnosing him as alcohol dependent.[8]

Since 2005, Applicant has continued to drink beer on the weekends. He usually consumes three to four beers at one time, sometimes when watching a game. He does not drink wine and will occasionally drink a mixed drink when out. In the summer, he may drink one or two beers in the evening. He may not drink anything for a week or more. Since completing the alcohol program, he will not drive if he drinks two beers at

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[5]GE 1, *supra* note 4, at 6-9, 11-12; Tr. at 32, 34.

[6]AE J (Letter, dated November 11, 2007); Tr. at 58-64.

[7]GE 3 (Department of Justice, Federal Bureau of Investigation, criminal records report, dated June 7, 2004); GE 4 (Court docket sheet); Tr. at 39-42, 44, 47, 68-69.

[8]Tr. at 38, 42, 44, 67.

home. He has not experienced any blackouts as a result of his drinking. He does not drink in the morning. His work attendance record for the last seven years indicates that he regularly arrives at work on time and does not miss work on a regular basis because of unexcused absences or health reasons. This record supports his statement that he has not missed work because of alcohol usage. He denies an alcohol problem. His supervisor has never sent him to the clinic because of alcohol use.[9]

After completing his SF-86, he returned to the same alcohol and substance abuse program for an evaluation at the request of his security office. He met with the same director in May 2007 for approximately 45 minutes and provided her with a urine sample. At the hearing, he admitted that he had not be truthful with her about when he last consumed alcohol. He told he had not consumed alcohol in one month, when it had been two days.[10]

The Director, who is a Licensed Professional Counselor (LPC), Licensed Marital and Family Therapist (LNFT) and Licensed Substance Abuse Treatment Practioner (LSATP), prepared a written report on this interview and the one urine test result. Based on the positive ethylglucuronide reading,[11] his statement that there was blood in his urine test at work in March 2007,[12] treatment history (without any further information), and his lack of honesty in self-reporting his alcohol use, the Director recommended an intensive treatment program of at least six months after a complete medical evaluation and liver enzyme testing program. In her May 2007 report, the Director not only recommended a full medical evaluation, she opined that because Applicant self-reported blood in his urine on one occasion, he may have liver damage from his alcohol use even though she is not a medical doctor.

In a supplemental report prepared in September 2007, the Director stated that Applicant's diagnosis after the May 2007 interview was Alcohol Dependence 303.90 (with tolerance). The supplemental report reflects that the diagnosis is based on his urine test results. Applicant has not followed up with the recommended treatment. He, however, consulted with a professional counselor about an evaluation. The counselor advised that it would take four or five sessions at least to provide an evaluation. The Director's May 2007 and September 2007 reports were sent to DOHA representatives, but not to Applicant although he admitted receiving the first letter.[13]

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[9] *Id.* at 39, 47-48, 51-52, 69-75; AE A (Attendance record).

[10] Tr. at 48-49.

[11] GE 5 (Counseling report, dated May 12, 2007). In this report the Director stated that this test shows alcohol use within 80 hours of the test.

[12] *Id*. According to the Director, blood in the urine may be indicative of liver damage.

[13] AE H (Copy of counselor's business card); AE I (Information sheet on counseling); Tr. 48.

In August 2007, Applicant underwent his six-month lead poisoning physical examination, with normal testing results. In June 2005 and in November 2007, his private physician examined him, and directed routine blood and urinalysis tests. The June 2005 report does not indicate any abnormal test results.[14]

The government entered into evidence pages 175-181 and 195-196 from the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), which reviews the criteria for diagnosing substance-related disorders. The DSM-IV, page 176-179, defines substance dependence as a cluster of three or more of the symptoms listed below occurring at any time in the same 12-month period. The symptoms include tolerance; withdrawal; drinking beyond the limit set for consuming alcohol; unsuccessful efforts at decreasing or discontinuing use of alcohol after persistent expression to do so; spending a great deal of time obtaining alcohol, using alcohol or recovering from the effects of the alcohol; daily activities resolve around alcohol use; and continued use of alcohol after recognizing the contributing role of the substance to a psychological or physical problem. The key issue in evaluating this criterion is not the existence of a problem, but rather the failure to abstain from using alcohol despite having evidence of the difficulties it is causing. The DSM-IV, page 179, states that "with physiological dependence" should be used when substance dependence is accompanied by evidence of tolerance and withdrawal. A similar statement is made concerning alcohol dependence on page 195.[15]

Applicant's most recent performance evaluation by his current supervisor rated him at 4, the highest rating available. His supervisor from late 2004 until early 2007 describes Applicant as a dependable and excellent employee with excellent attendance. Applicant's recent credit report reflects that his bills are paid in a timely manner and his finances are well managed.[16]

The labor agreement between Applicant's employer and the union representing employees outlines the policy for alcohol use during work hours and the criteria under which the employer may test for alcohol use. His employer's disciplinary guidelines provide for immediate discharge if alcohol is used on the job or an employee reports to work under the influence of alcohol, subject to the terms of the union contract which does allow for one period of rehabilitation before discharge.[17]

Department counsel mailed interrogatories to Applicant in the spring of 2007, date unknown. The interrogatories directed Applicant to provide full and truthful answers to the questions. Question 2 outlines background information, including a

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[14]AE K (Medical report, dated June 13, 2005); AE L (Medical report, dated November 6, 2007); Tr. at 90-91.

[15]GE 7.

[16]AE B (Letter, dated October 8, 2007); AE C (2007 Performance Feedback, dated October 1, 2007); AE G (Credit report, dated October 3, 2007).

[17]AE D (Disciplinary guidelines); AE E (Copy of relevant labor agreement provisions).

statement that 2005 records reviewed by the Department of Defense indicated that Applicant was provided with a diagnosis of Substance Abuse with Alcohol Dependence. The question asked him to provide comments regarding this brief background information. Applicant responded that he made a mistake driving under the influence and that he would not let drinking effect his job. His answer is not responsive to the question. In response to Question 5, Applicant denied that he was an alcoholic. The records, which serve as the basis for the background information and diagnosis, are not part of the record nor were these records provided to Applicant with the interrogatories. Applicant never received the earlier records, although he received the more recent reports in discovery.[18]

POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.[19]

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.[20] The government has the burden of proving controverted facts.[21] The burden of proof is something less than a preponderance of the evidence.[22] Once the government has met its burden, the burden shifts to the applicant to present evidence of

[18] GE 2 (Interrogatories and answers, dated May 7, 2007) at 2-3.

[19]Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

[20]ISCR Case No. 96-0277 at 2 (App. Bd. July 11, 1997).

[21]ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

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

refutation, extenuation, or mitigation to overcome the case against him.[23] Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.[24]

No one has a right to a security clearance,[25] and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."[26] Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.[27] Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.[28] It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Alcohol Consumption

The Appeal Board remanded this case for reconsideration of my findings under AG DC ¶¶ 22(d) and 22(e). The Board concluded that I erred when I found the government's burden of proof insufficient based on the qualifications of the medical professional and the submitted medical report's lack of credibility.

The Appeal Board held that I interpreted the meaning of the term "medical professional" in AG ¶ 22(d) too narrowly and that the Director of the alcohol and substance abuse program meets the definition as set forth in the guidelines. Based on the Appeal Board's determination, I find that the Director is a medical professional. As a medical professional, the Director renders opinions regarding individuals she has evaluated and may have also treated. Her opinions may include a diagnosis regarding

[23]ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

[24]ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

[25]*Egan*, 484 U.S. at 531.

[26]*Id*.

[27]*Id*.; Directive, revised AG ¶ 2(b).

[28]Executive Order No. 10865 § 7.

an individual's substance abuse related problems, such as alcohol.[29] To render such an opinion, a medical professional usually prepares a written report outlining the basis for the diagnosis contained in the opinion. In this case, the government submitted two reports from the Director, which constitute her opinion regarding Applicant's use of alcohol and affects of his alcohol use. The second report contains, for the first time in September 2007, a specific diagnosis of alcohol dependence.

The Appeal Board has always held that findings of fact are for the administrative judge and that they cannot substitute their opinion for that of the administrative judge, a position supported by well-settled federal case law. In *Director, OWCP v. Rowe*, 710 F.2d 251, 254-255 (6th Cir. 1983), the United States Court of Appeals for the Sixth Circuit held, "The determination of whether a physician's report is sufficiently documented and reasoned is essentially a credibility matter and is for the finder of fact to decide." *See also Poole v. Freeman United Coal Mining Company*, 897 F.2d 888 (7th Cir. 1990).

Concerning my credibility findings on the Director's opinion, the Appeal Board concluded the Director's diagnosis was contained in a summarization of an evaluation, and thus is not a medical record.[30] Because the Appeal Board held her reports are not medical records, the Appeal Board concluded:

> The judge cites to no evidence in the record from which one can reasonably conclude that the Director did not utilize accepted standards, criteria, or methodology in making her diagnosis nor is there any evidence that would otherwise impugn her competence.

Remand Decision at 5.

In essence, the Appeal held that before I can find a medical report or summary evaluation not credible, the record must contain evidence challenging the methodology or contradicting the diagnosis. The Appeal Board's conclusion is contrary to longstanding legal standards and federal case law because it shifts the burden from the proponent of the evidence to the Applicant. This is particularly inappropriate when the government is represented by skilled counsel and the Applicant is not represented by counsel.

In order to reach a credibility finding on the validity of the Director's reasoning, I am not required by law to rely on other evidence of record regarding methodology and

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[29]AG ¶ 22(d) requires "[a] diagnosis by a duly qualified medical professional of alcohol abuse or alcohol dependence." Merriam-Webster's Collegiate Dictionary. Eleventh Edition, defines diagnosis as "the art or act identifying a disease from its signs and symptoms."

[30]Based on my 16 years of experience in disability law, the Director's letters would be viewed by the federal courts as medical reports because the letters are based on medical records and testing. Her opinion would also be scrutinized under the cited legal standard to determine if the reports would have an adequate foundation to meet the government's substantial evidence burden of proof.

standards to decide that the Director's opinion is not reasoned, and therefore, not credible. A medical report must stand on its own. For the Director's report and diagnosis to be credible, I must determine if the report is well-reasoned and conclusions are adequately documented. In making this credibility determination, the United States Court of Appeals for the Eight Circuit, like other United States Courts of Appeal, said:

> The mere fact that an opinion is asserted to be based upon medical studies cannot by itself establish as a matter of law that it is documented and reasoned. Rather, that determination requires the factfinder to examine the validity of the reasoning of a medical opinion in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based. . .

Phillips v. Director, OWCP, 768 F.2d 982 (8th Cir. 1985) (citing *Director, OWCP v. Rowe*, 710 F.2d 251, 254-255 (6th Cir. 1983)).[31]

Under its law, this State can pay for substance abuse treatment through its medical program. The state's governing regulations outline specific criteria regarding the qualifications of individuals rendering treatment and the types of treatment which can be provided. In addition, state regulations require community substance abuse treatment services to evaluate an individual prior to treatment and render a written report. A minimal evaluation and report consists of a structured objective assessment of the impact of substance use or dependence on the recipient's functioning in the following areas: drug use, alcohol use, legal system involvement, employment and/ or school issues, and medical, family-social, and psychiatric issues. 12 VAC 30-50-228; *See also* 12 VAC 30-50-141, 12 VAC 30-50-151, 12 VAC 30-50-181.

The government submitted portions of the DSM-IV as supporting evidence for the Director's alcohol dependence diagnosis, since she specifically referenced this manual in her report. As previously noted, the DSM-IV, a well-recognized diagnostic tool, makes specific reference to a cluster of three criteria which a professional must consider when making a diagnosis of alcohol dependence. The Director's report does not identify three cluster criteria which serves as a basis for her ultimate conclusion. It does not reflect

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[31]In a recent personal appearance case, I relied on a psychological evaluation submitted into the record as it complied with Army Regulation 380-67, Chapter 5, Section 5-106 *d* report writing standards. The medical professional outlined in his detailed report the following steps taken by him in reaching his conclusion. He interviewed and tested the Appellant on three occasions, talked with Appellant's criminal attorney on two occasions, interviewed Appellant's mother and physician, and reviewed a written memorandum from Appellant's supervisor. From these interviews, the medical professional developed a family and developmental history, educational history, employment history, medical history, substance use and abuse history, mental health history, dating and sexual history, and criminal history which were explained in detail in his report. The medical professional also administered the following tests: Minnesota Multiphasic Personality Inventory - Second Edition (MMPI-2), Hare Psychopathy Checklist - Second Edition (PCL:R2), and Mental Health Examination. Based on all this information, the medical professional reached a diagnosis and conclusion regarding the Appellant's medical problems. This is an example of a well-documented medical evaluation. The medical professional rendered a reasoned opinion based on the information he outlined in his report. PA Case No. 07-17085.

Applicant had a problem with withdrawal; drank beyond the limit set for consumption of alcohol; unsuccessful efforts at decreasing or discontinuing use of alcohol after persistent expression to do so; spending a great deal of time obtaining alcohol, using alcohol or recovering from the effects of the alcohol; daily activities resolve around alcohol use; and continued use of alcohol after recognizing the contributing role of the substance to a psychological or physical problem. Rather, the Director relied on one blood-alcohol test, unidentified history, one DUI, previous court-related treatment program, and his lack of truthfulness about his consumption of alcohol, factors which are not discussed in the DSM-IV. She also suggested that he may have serious liver disease, which is a finding for a medical doctor, not her. There are many possible reasons for blood in urine that are unrelated to alcohol consumption or liver damage.

The DSM-IV directs that the key issue in evaluating the above criterion is not the existence of a problem, but rather the failure to abstain from using alcohol despite having evidence of the difficulties it is causing. In her report, the Director does not discuss any difficulties Applicant is having because he has not abstained from alcohol. The record evidence indicates that since receiving his first DUI in June 2004 and completing his substance abuse treatment program, Applicant has modified his use of alcohol. He now drinks beer on the weekend and does not drive. He reports to work every day, using leave at a normal level. Under the terms of the union contract, he would be fired immediately if he drank on the job or showed up to work smelling of alcohol. He has been married for 23 years and held his current employment for 36 years. He must undergo a physical examination twice a year at his job and his test results have generally been normal. He does not have financial problems. A consideration of these factors could be important in evaluating Applicant under the DSM-IV criteria and state law.

The Director's medical report is minimally documented. However, as previously stated, I find that this medical report is not reasoned because it does not address the DSM-IV criteria necessary to make a diagnosis of alcohol dependence. I again find that the government has established a security concern under AG ¶¶ 22(a) and 22(c), but not under AG ¶ 22(d) because the report is not reasoned and does not follow standard report writing criteria. AG ¶ 22(e) does not apply because the Director is not a licensed social worker, the specific requirement of this disqualifying condition.

I disagree with the Appeal Board"s conclusion that the government has established its case under AG ¶¶ 22(d) and (e) because the Director, as a medical professional, has not rendered a medically sufficient report to support her diagnosis as required by the DSM-IV. In addition, since Applicant has not been given any documentary evidence of a diagnosis of alcohol dependency (this diagnosis was not in the May 2007 report), he had not received proper notice of the government's intent to rely on the Director's September 2007 diagnosis until shortly before the hearing. Applicant had no opportunity to develop legally sufficient evidence in mitigation.

While I have a fundamental disagreement with the Appeal Board's decision to undertake *de novo* review and to substitute its opinion for mine in its factual finding and

conclusion that the government has established the application of disqualifying conditions AG ¶¶ 22(d) and 22(e), I will assume both disqualifying conditions apply and consider the mitigating conditions under AG ¶ 23.

Since receiving his one and only DUI, Applicant continues to drink in moderation, which is not illegal. The question under AG ¶ 23(a) is whether his behavior would reoccur or casts doubt on his current reliability, trustworthiness or good judgment. Although he continues to drink, Applicant refrains from driving and drinking, so there is little likelihood that he will be arrested for DUI. He does not drink at work or prior to going to work, as he knows he will loose his job immediately. He has a very good work attendance record and his employer praises his work skills. He is a team leader and skilled at his job. He has no work related discipline or security violations. His current use of alcohol does not raise a concern about his judgment, trustworthiness, or reliability even if the diagnosis of alcohol dependence is correct. AG ¶ 23(a) applies. The remaining mitigating conditions are not applicable to this case.

Whole Person Analysis

In my previous decision, I made a whole person analysis, much of which I again use in this decision. Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant's risk and vulnerability in protecting our national interests.

Applicant began drinking beer as a young man and continues to drink beer on a regular basis. He denies drinking to excess and impairment, despite the opinion of the substance abuse Director that he is alcohol dependent. The Director's report provides little support for her analysis because she has not articulated an understanding of the Applicant as an entire person, as required by the DSM-IV. Outside of her report, the record lacks evidence that Applicant abuses alcohol. His work attendance is excellent. His most recent work evaluation is at the highest level and his bills are paid in a timely manner. If he had a serious alcohol problem, it is most likely that problems would occur in the workplace and his finances would be more problematic. As a condition to obtain a restricted driver's license, the court required him to attend an alcohol and substance abuse safety program, which he did. He denies that when he completed the program, any recommendations for additional treatment or abstinence from drinking alcohol were made to him and the record contains no evidence of such a recommendation to him or to the court. It has been more than three years since he received his only DUI. Because of his alcohol education, he has decided he will not drive if he has consumed two beers at home. This decision does not indicate that he is impaired after drinking two beers, but reflects sound, rational and mature decision making related to the use of alcohol and driving.

Other than the one blood-alcohol test relied upon by the substance abuse director, the record contains no evidence that Applicant consumes alcohol to excess and to impairment since receiving his DUI ticket in 2004. He acknowledges that he continues to drink in moderation. His overall history indicates that he has consumed alcohol, primarily beer, in moderation for many years. The diagnosis of alcohol dependence does not reflect an understanding of Applicant's alcohol use, his lifestyle, work history, or medical history and thus, is given little credence. Because he works with lead on a daily basis, his employer requires him to submit to a regular physical examination for lead poisoning. These examinations include blood and urine tests. The record contains no evidence which indicates that these tests results showed a problem with alcohol consumption, which could raise workplace issues for him. Because his employer has strict rules concerning the consumption of alcohol at work and arriving at work intoxicated, I infer that these tests over the last 36 years showed no serious alcohol problems. Had a problem been demonstrated, Applicant's employer would have proceeded with disciplinary action against him under its rules and in accordance with the terms of the union contract. Based entirely on the "whole person analysis" without considering the applicability of any mitigating conditions, including AG ¶ 23(a), alcohol consumption is mitigated under Guideline G and the whole person.

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:

SOR ¶ 1-Guideline G :	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is granted.

Mary E. Henry
Administrative Judge