



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



In the matter of:)
)
) ISCR Case No. 17-01289
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: Cathryn E. Young, Esq.

04/23/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant had two alcohol-related driving offenses, was impaired by alcohol on duty, and engaged in an alcohol-related disorderly conduct. He was diagnosed as alcohol dependent in 2009 and alcohol-use disorder in 2012. He made some positive steps towards rehabilitation; however, security concerns under Guideline G (alcohol consumption) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 25, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On October 5, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. The SOR set forth security concerns arising under Guideline G. (Hearing Exhibit (HE) 2)

On November 20, 2017, Applicant provided a response to the SOR, and he requested a hearing. (HE 3) On October 3, 2018, Department Counsel was ready to

proceed. On October 16, 2018, the case was assigned to me. On November 15, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 7, 2019; however, the hearing was cancelled due to lack of a sponsor for Applicant for a security clearance. (HE 1) Applicant subsequently received sponsorship, and on February 22, 2019, DOHA issued a notice of hearing setting the hearing for March 21, 2019. (HE 1A) The hearing was held as scheduled.

During the hearing, Department Counsel offered 14 exhibits; Applicant offered 9 exhibits; Applicant initially objected to GEs 5 and 7, and then subsequently waived the objection. There were no other objections; and all proffered exhibits were admitted into evidence. (Tr. 12-17, 142; GE 1-14; Applicant Exhibit (AE) A-I) On April 1, 2019, DOHA received a copy of the hearing transcript (Tr.).

Findings of Fact¹

In Applicant's SOR response, he admitted SOR ¶¶ 1.a, 1.d, 1.e, and 1.f. (HE 3) He denied the other SOR allegations in full or in part. He also provided mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is 42 years old, and he is employed as a senior systems security specialist. (Tr. 39, 49) He protects sensitive healthcare information in his current position. (Tr. 39, 49) One of his primary goals is to mitigate risk in information security. (Tr. 50) He has an associate's degree in computer science. (Tr. 43) In 2015, he received a bachelor's degree in systems security. (Tr. 48) He is in the process of obtaining his certification as an information systems manager. (Tr. 48) He has a strong resume in communications security and information technology. (AE I)

In 1998, Applicant married, and he and his spouse have three children ages 8, 16, and 19. (Tr. 18, 25-26, 36, 40) Applicant's spouse holds a security clearance, and she is employed as a financial manager. (Tr. 35)

Applicant served in the Army from 2004 to July 2012. (Tr. 42-43) He was a senior communications security repair specialist. (Tr. 44-45) In 2010, he held a top secret clearance with access to sensitive compartmented information (SCI). (Tr. 46) He said he never had a security violation. (Tr. 46) He denied that his alcohol consumption affected his work performance. (Tr. 47)

Alcohol Consumption

The SOR alleges the following conduct of security significance.

SOR ¶ 1.a alleges in August 2004, Applicant was arrested for and convicted of driving under the influence of alcohol (DUI). Applicant drove after consuming alcohol and hit a guard rail. (Tr. 58) He was in Army advanced individual training or AIT when he was

¹ Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

arrested for DUI. (Tr. 61) He said he did not recall his breathalyzer result. (Tr. 61) He pleaded guilty to DUI. (Tr. 61) The court imposed 48 hours in jail, 80 hours of community service, a fine, and driver's license suspension. (Tr. 62, 64)

Applicant's commander imposed nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for the August 2004 DUI. His punishment included 45 days of extra duty, and his commander required him to attend the Army Substance Abuse Program (ASAP). (Tr. 62-64; GE 7 at ¶ 1) After completion of AIT, the Army assigned Applicant to a unit in Germany. (Tr. 62)

SOR ¶ 1.b alleges in November 2006, Applicant was charged with drunk on duty and wrongful distribution of hallucinogens. His NJP included a reduction in rank. As to the drunk on duty offense, Applicant said a sergeant relieved him from duty on New Year's Eve. (Tr. 67) He and some other soldiers left the barracks and went to a club, where he consumed alcohol. (Tr. 67) He returned to the barracks and went to sleep. (Tr. 67) The first sergeant, and the sergeant who released him from duty, came to Applicant's barracks room. The first sergeant asked Applicant why he was not on duty, and Applicant did not respond to his question because he believed he would not be believed if he said the sergeant with the first sergeant released him from duty. (Tr. 67, 113) Applicant's unit referred him to the ASAP. (Tr. 68, 112) He successfully completed ASAP. (Tr. 68-70; GE 7 at ¶ 1) Applicant denied that he was under the influence of alcohol on duty, and he claimed that he was not under the influence of alcohol. (Tr. 69) He believed he was unfairly accused of being drunk on duty. (Tr. 70)

The allegation of wrongful distribution of hallucinogens was made against Applicant several months after the drunk on duty accusation was made. (Tr. 71) An airman, who tested positive in a urinalysis test for use of Ecstasy, said Applicant provided an Ecstasy pill to him. (Tr. 71; GE 6 at 2-3) Applicant consented to the search of his room in the barracks, and the searcher found three Ecstasy pills in the drawer under Applicant's bed. (Tr. 72; GE 6 at 2) Applicant said others had access to his room and must have placed the Ecstasy pills into his drawer. Applicant said he provided statements to the Army Criminal Investigation Command from witnesses who said they did not see Applicant commit drug offenses. (Tr. 74-75, 132) Applicant's commander imposed NJP including a reduction in grade, forfeiture of half a month's pay for two months, and extra duty. (Tr. 73; GE 14) Applicant said the colonel who imposed the NJP told him that he believed Applicant; however, he had to punish Applicant to show illegal drugs are not tolerated "whether [he] did it or not." (Tr. 73, 133-134) Applicant accused the colonel of punishing him even though Applicant was innocent. (Tr. 134) Applicant denied his involvement with illegal drugs. (Tr. 74) Applicant did not provide a statement from anyone besides himself corroborating his assertion that the colonel said he was innocent, but punished him anyway. He did not provide proof to support his claim that the colonel violated his rights by knowingly and improperly punishing him for a crime he did not commit.

SOR ¶ 1.c alleges in August 2008, Applicant voluntarily referred himself for treatment in ASAP. Applicant did not recall his self-referral for treatment in ASAP. (Tr. 76,

78; GE 7) Applicant was diagnosed in March 2009, as alcohol dependent. (Tr. 76, 131; GE 5; GE 7)

SOR ¶ 1.d alleges in June 2009, Applicant was charged with DUI, simple assault, and disorderly conduct. Applicant got into an altercation after consuming alcohol. He pleaded guilty to disorderly conduct, and the DUI and assault charges were dismissed.

In 2009, Applicant was with a friend at a bar. (Tr. 79) Applicant drank four or five strong drinks, and Applicant admitted he was intoxicated. (Tr. 80-81) Applicant was the only Black person in the bar, and a man came up to Applicant, asked him for a cigarette, and called him a n _ _ _ _ r. (Tr. 82) More words were exchanged, and Applicant left the bar and went to the parking lot. (Tr. 83) Applicant described his own conduct in the bar as reasonable and peaceful. In the parking lot outside the bar, the man insulted Applicant again and tried to punch Applicant. (Tr. 83) Applicant hit the man in the face, and the man hit his head on the ground. (Tr. 83) Someone tackled Applicant and knocked Applicant down. Others kicked Applicant and his friend while they were down. (Tr. 83-84) Applicant said, "I heard the whole, entire bar . . . [say] '[w]e're going to hang us a n _ _ _ _ r.'" (Tr. 84) Applicant said he believed they were going to get a rope and drag him down the street by the neck. (Tr. 84) Applicant and his friend left in his friend's vehicle. (Tr. 84) A short time later, the police arrested Applicant and his friend. (Tr. 85) Applicant did not recall whether a blood alcohol test (BAT) was administered, and Applicant denied that he was driving. (GE 3 at 7) The police told Applicant that the person Applicant punched had "a pretty bad gash on his head." (Tr. 85) According to the notice of preliminary hearing, Applicant was charged with simple assault, disorderly conduct, DUI/high rate of alcohol .10-.16, and DUI/Gen IMP/INCAP of driving safely. (GE 8) Applicant's friend was charged with DUI, simple assault, and disorderly conduct. (Tr. 86) Applicant pleaded guilty to disorderly conduct, and the other charges were withdrawn. (Tr. 88; GE 8) He received court fees totaling \$229. (Tr. 88; GE 8) Applicant's record was subsequently expunged. (Tr. 88; AE A)

On March 2, 2009, an Army social worker and ASAP Clinical Director evaluated Applicant's alcohol consumption. (GE 7) She indicated he met three of seven criteria for alcohol dependence, and his beer consumption during ASAP established a fourth criteria. (GE 7)² The Clinical Director indicated that his diagnosis of alcohol dependence "became

² In 2000, the American Psychiatric Association issued the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR). This manual indicates that if three of the following seven criteria are met in the previous year, a diagnosis of alcohol dependence is warranted. The seven criteria are as follows:

Had to drink much more than you once did to get the effect you want? Or found that your usual number of drinks had much less effect than before?

Found that when the effects of alcohol were wearing off, you had withdrawal symptoms, such as trouble sleeping, shakiness, restlessness, nausea, sweating, a racing heart, or a seizure? Or sensed things that were not there?

Had times when you ended up drinking more, or longer, than you intended?

More than once wanted to cut down or stop drinking, or tried to, but couldn't?

a point of contention for [Applicant] and he spent a number of weeks fixated on this and his adamant disagreement with same.” (GE 6 at ¶ 2) Applicant claimed the ASAP Clinical Director said that “Anyone that has two sittings a year drinking alcohol, and in those two sittings drink[s] more than two drinks, is considered an alcoholic.” (Tr. 98, 118, 123) Applicant denied that he was an “alcoholic”; however, he said he did “binge drink.” (Tr. 98, 111-112) He said the statement in the Clinical Director’s report that he drank half a beer while in ASAP was false, but that she was not lying. (Tr. 134-135) He did not recall admitting to her that he drank beer while in ASAP. (Tr. 135) Applicant said he was unaware of the diagnosis of alcohol dependency. (Tr. 126) He characterized the Clinical Director as “mean,” “very attacking,” “very abusive,” and “very manipulating.” (Tr. 122, 134) He said she told him, “I’m going to get you. I’m going to get you.” (Tr. 134) He denied that anyone told him not to drink alcohol. (Tr. 119)

SOR ¶ 1.e alleges in September 2011, Applicant was charged with DUI. After attending a civilian substance abuse program, the charge in state court was dismissed. In May 2012, Applicant’s command charged him with operating a vehicle while drunk under Article 111, UCMJ. He was discharged from the service in lieu of courts-martial, and he received a general discharge under honorable conditions.

In September 2011, Applicant and his spouse were both drinking alcohol before they started to drive home. (Tr. 31-32) Applicant was asked how much he had to drink, and he said he had a “drink or two” or “at least two drinks that evening.” (Tr. 91) Applicant said he did not feel intoxicated. (Tr. 91) Applicant fell asleep while driving to their home and hit a tree. (Tr. 32-33, 89) Applicant received serious burns to his legs and had multiple broken bones. (Tr. 23-24, 44, 89-90) He was in a coma for six days and in the hospital for about four months. (Tr. 23-24, 90) His spouse attributed the accident to Applicant’s severe sleep apnea and being tired. (Tr. 33) Applicant’s records indicate he had a BAT; however, Applicant said he did not remember the result. (Tr. 91; GE 3 at 5) A letter of reprimand from a major general indicates that a police officer at the scene of the accident “noted a strong odor of alcohol coming from [Applicant’s] breath and person,” and he had a BAT result of a .14 blood alcohol content (BAC). (AE B at ¶ 1) The state dismissed the DUI charge. (Tr. 92)

The Army preferred a charge of drunk driving against Applicant. (Tr. 93, 136) Applicant said his lawyer convinced him that he could not get a fair trial in the military because “[t]he Army has deep pockets,” “they are known to get on the witness stand and lie,” and “[t]here is no way you could win this.” (Tr. 94-95) He was convinced he was

Spent a lot of time drinking? Or being sick or getting over other aftereffects?

Given up or cut back on activities that were important or interesting to you, or gave you pleasure, in order to drink?

Continued to drink even though it was making you feel depressed or anxious or adding to another health problem? Or after having had a memory blackout?

See National Institute of Health Fact Sheet discussing DSM-IV and DSM-V. (HE 5)

getting “railroaded.” (Tr. 95) At his security clearance hearing, Applicant admitted he was guilty of the DUI offense. (Tr. 138)

Applicant was a sergeant (E-5) before being reduced to private (E-1) through an administrative reduction related to being charged with operating a vehicle while drunk and receipt of a discharge under Chapter 10 of Army Regulation 635-200. (Tr. 45, 95) He received a general discharge under honorable conditions. (Tr. 45-46, 97)³

SOR ¶ 1.f alleges from about February 2012 to July 2012, Applicant received treatment at an ASAP. He was diagnosed with alcohol dependence. Applicant self-referred himself to ASAP. (Tr. 126) He said he decided not to get drunk anymore. (Tr. 127) Applicant said he successfully completed ASAP. (GE 1)

SOR ¶ 1.g alleges Applicant continues to consume alcohol notwithstanding his diagnosis of alcohol dependence. Applicant said he ended his alcohol consumption in June 2017. (Tr. 104) He also said he stopped drinking alcohol after the accident in 2011 or his alcohol consumption was “close to none” until his birthday in June 2017. (Tr. 104-105) He said he did not drink alcohol and drive after the accident in 2011. (Tr. 105) He claimed he did not drink alcohol while he was in ASAP. (Tr. 120-121) He denied that he was alcohol dependent. (Tr. 129) There is no evidence that Applicant currently consumes alcohol, and SOR ¶ 1.g is not substantiated.

Applicant denied receipt of the January 14, 2010 memorandum from the Army Central Personnel Security Clearance Facility (CPSCF) granting his access to sensitive compartmented information and top secret information, and warning him not to have any future incidents involving alcohol, criminal conduct, or other unfavorable information because it may result in suspension of his security clearance. (Tr. 124; GE 12) There is no receipt signed by Applicant in the file showing Applicant received the January 14, 2010 Army CPSCF memorandum. (GE 12)

Applicant’s spouse said the last time she observed him consuming alcohol was on his birthday in June 2017. (Tr. 20) She said on that occasion, he drank one half of a glass of wine. (Tr. 20, 37) Applicant said he had “two glasses of wine on [his] birthday.” (Tr. 128) After the accident in 2011, he seldom consumed alcohol and not to intoxication. (Tr. 21) His alcohol-related accident in 2011 was a shock to him, and he changed. (Tr. 21) He denied that he drank to intoxication after the accident in 2011. (Tr. 128) He denied drinking alcohol after his birthday in June 2017. (Tr. 129) His spouse maintains wine in her house. (Tr. 22) In 2015, Applicant and his spouse were baptized, and his church is available to

³ Applicant denied that he admitted the offense as part of the discharge process or he did not remember admitting an offense carrying a bad-conduct discharge. (Tr. 136-137) Under Army Regulation (AR) 635-200, *Active Duty Enlisted Administrative Separations*, Chapter 10, paragraph 10-2e, “The Soldier’s written request will also include an acknowledgment that he/she understands the elements of the offense (s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge. (See fig 10–1, para 2.)” https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/AR635-200_Web_FINAL_18JAN2017.pdf. The requirement for this admission of guilt to a serious offense has been part of AR 635-200, Chapter 10 for more than 30 years. When a Chapter 10 discharge is approved, the soldier being discharged is administratively reduced to private E-1.

him as a support system. (Tr. 22-25) His spouse indicates Applicant has “great integrity,” and she recommends approval of his security clearance. (Tr. 38) He said he “took responsibility” for his conduct. (Tr. 70, 140-141)

On September 9, 2016, an Officer Personnel Management (OPM) investigator interviewed Applicant about his history of alcohol consumption. (GE 3) The summary of the OPM interview states:

In 2009 or 2010; Subject could not be more specific, Subject found [G]od and dedicated himself to his family and Subject’s drinking decreased to its current level of three to four mixed drinks over a five to six hour time period once or twice per year during the holidays. . . . Subject has no intent on changing his drinking habits in the future. (GE 3 at 11)

Applicant said he had changed after the accident in 2011. (Tr. 100) “[He] had an out-of-body experience where [he] met the Creator.” (Tr. 100) The Creator held Applicant by the neck over a fire and said, “Is this what you want?” (Tr. 101) He responded that he wanted a second chance, and he woke up in the hospital. (Tr. 101) Applicant believed he healed from his injuries “at a supernatural rate.” (Tr. 101-102) He considers himself to be honest, responsible, reliable, and trustworthy. (Tr. 107)

In sum, Applicant successfully completed ASAP in April 2005, January 2009, and February 2012. (AE D) He has never had a positive urinalysis for use of illegal drugs. (AE D) In 2012, he was diagnosed with alcohol-use disorder. (AE D) In February 2012, he made a commitment to abstain from alcohol use. (AE D) At his hearing, he promised to abstain from alcohol consumption in the future.

Character Evidence

Before Applicant deployed to Iraq with a task force, his colonel said “we were going to lose 40 – almost half, 44 percent, which we did lose half.” (Tr. 66) Applicant said he was a gunner for “over 279 missions.” (Tr. 66) His “mind state was that I’m going to die, but if I’m going to die, I’m going to die honorably, and just, you know for my brothers and sisters that wear the flag.” (Tr. 66)

While in Iraq, Applicant said he received multiple Combat Action Badges (CAB).⁴ He explained why he only had one CAB in his records as follows:

⁴ I decline to credit Applicant with receipt of more than one Combat Action Badge. The Army Human Relations Command website states:

Subsequent award of the CAB is not authorized during the same qualifying period. The qualifying period is defined as the contingency/conflict for which the Secretary of the Army authorized combat badges is awarded. Currently, the only qualifying period for award of the CAB is the GWOT. OEF, OIF, and OND are operations within the GWOT contingency/conflict. Therefore, no matter how many times a Soldier rotates to the theater, only one award of each combat badge is authorized. (For example, a Soldier who engages in combat with the enemy during OIF I, OEF III, and OIF V will only receive one CAB.)

And I remember throwing them down. I was, like, I'm tired of these combat action badges. And I remember throwing them down and walking away because I was upset about . . . all the combat, the killing. And I said, I'm tired of you giving me awards for killing all these people. And I just walked away, and I said, you know. Give me money for the combat action badges, because I saw no value to it. (Tr. 139)

He indicated records were burned in the trunk of his car during the accident in 2011. (Tr. 139-140) He did not provide corroborative evidence that he was a gunner for "over 279 missions," that he was assigned to a unit that sustained a high percentage of combat casualties, or that he was awarded multiple CABs.

Applicant said that after he came back from Iraq, he described symptoms of having post-traumatic stress disorder (PTSD), and a doctor "threw some pills at [him]" and told him he would be fine in three months. (Tr. 77) Applicant threw the pills in the trash. (Tr. 77) The Department of Veterans Affairs (VA) decided that he had a disability rating of 90 percent, which included 30 percent for PTSD. (Tr. 135; AE D)

Applicant's DD Form 214 indicates he has the following medals, badges, and ribbons: Army Commendation Medal (ARCOM); Army Achievement Medal (AAM) (6th Award); Army Superior Unit Award (ASUA); Army Good Conduct Medal (AGCM); National Defense Service Medal (NDSM); Global War on Terrorism Service Medal (GWTSM); Iraq Campaign Medal with Campaign Star (ICMCS); Noncommissioned Officer Professional Development Ribbon (NCOPDR) (2nd Award); Army Service Ribbon (ASR); Overseas Service Ribbon (OSR) (2nd Award); Combat Action Badge (CAB); and Certificate of Achievement (COR). (GE 4; AE G) He completed multiple military training courses. (GE 4) He served in Iraq from August 2006 to October 2007. (GE 4) He also served an overseas tour in Germany.

In 2017, Applicant received an excellent performance evaluation from his employer. (AE E) He also received some excellent evaluation reports when he was in the Army. (AE F) Applicant was the distinguished honor graduate of a course. (Tr. 47) He provided award certificates and orders for several medals and one CAB as listed on his DD Form 214. (AE F) Letters of recommendation from his spouse, supervisors, friends, and colleagues lauded Applicant's intelligence, diligence, positive attitude, enthusiasm, honesty, friendliness, athleticism when he was younger, and professionalism. (AE H)

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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual

U.S. Army Human Relations website, The Adjutant General Directorate (TAGD), *Combat Action Badge*, <https://www.hrc.army.mil/TAGD/Combat%20Action%20Badge%20CAB>.

is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the applicant’s personal or professional history that may disqualify the applicant for eligibility for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

AG ¶ 22 lists conditions under the alcohol consumption guideline that could raise a security concern and may be disqualifying including:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder;

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;

(e) the failure to follow treatment advice once diagnosed;

(f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(a) through 22(d) apply. The SOR does not allege evidence to support AG ¶¶ 22(e), 22(f), and 22(g). Applicant's four alcohol-related incidents involving the police, courts, or his command occurred from 2004 to 2011. His BAC for three of the four alcohol-related incidents is unknown. His BAC for the 2011 DUI was .14. He was impaired by alcohol in 2006 when he was supposed to be on duty. His .14 BAC established that he engaged in binge alcohol consumption to the extent of impaired judgment.⁵ In 2009,

⁵ "Binge drinking is the most common pattern of excessive alcohol use in the United States." See the Center for Disease Control website, (stating "The National Institute on Alcohol Abuse and Alcoholism

he was diagnosed with alcohol dependence, and in 2012, he was diagnosed with alcohol-use disorder.

AG ¶ 23 details conditions that could mitigate security concerns including:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

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

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). See also ISCR Case No. 08-04232 (App. Bd. Oct. 9, 2009) (affirming denial of security clearance for Applicant with alcohol-related criminal offenses for six years prior to hearing). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to

defines binge drinking as a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours."), <https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm>. There are other definitions of "binge alcohol consumption" that involve different alcohol-consumption amounts and patterns.

intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *a/so* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption and Applicant's history of alcohol consumption. Applicant presented some evidence supporting mitigation of alcohol consumption concerns. Applicant successfully completed ASAP in April 2005, January 2009, and February 2012. He has never had a positive urinalysis for use of illegal drugs. In February 2012, he made a commitment to abstain from alcohol use; however, he occasionally drank alcohol until his birthday in 2017. He has not had any alcohol-related incidents involving the police or courts since his DUI resulting in serious injury in 2011.

Several factors weigh against mitigation of alcohol consumption security concerns: (1) Applicant's four alcohol-related offenses; (2) his reluctance to permanently abstain from alcohol consumption; (3) his binge alcohol consumption to the extent of having a .14 BAC; (4) his diagnosis of alcohol abuse; (5) his resumption of alcohol consumption after previous periods of abstinence and SARP attendances; and (6) credibility issues relating to his pejorative allegations against his battalion commander who imposed NJP for his distribution of Ecstasy, allegations against his defense attorney, including claims that he could not receive a fair trial from the Army, and his complaints about the Clinical Director being out to get him and using improper criteria for evaluating him in 2009. I have lingering doubts and concerns about Applicant's current reliability, trustworthiness, and good judgment pertaining to his history of alcohol consumption. Alcohol consumption security concerns are not mitigated.

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 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), "[t]he 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. "In evaluating an applicant's case, a

Judge must carefully consider the record as a whole. This includes not only considering the extent to which an applicant's circumstances raise concerns about his or her reliability but also giving fair consideration of the applicant's mitigating evidence." ISCR Case No. 12-09900 at 3 (App. Bd. Dec. 7, 2016) (citing ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016)). My comments under Guideline G are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 42 years old, and he is employed as a senior systems security specialist. He has an associate's degree in computer science. In 2015, he received a bachelor's degree in systems security. He is in the process of obtaining his certification as an information systems manager. He has a strong resume in communications security and information technology.

Applicant served in the Army from 2004 to July 2012. He was a senior communications security repair specialist. In 2010, he held a top secret clearance with access to SCI. He said he never had a security violation. Applicant's DD Form 214 indicates he has the following medals, badges, and ribbons: ARCOM; AAM (6th Award); ASUA; AGCM; NDSM; GWTSM; ICMCS; NCOPDR (2nd Award); ASR; OSR (2nd Award); CAB; and COR. He completed multiple military training courses. He successfully completed overseas tours in Germany and most importantly served in Iraq from August 2006 to October 2007. The VA has awarded him a 90 percent disability rating including 30 percent for PTSD. He received excellent performance evaluations, and he provided character letters praising his intelligence, diligence, positive attitude, enthusiasm, honesty, friendliness, athleticism when he was younger, and professionalism.

The evidence weighing against grant of Applicant's access to classified information is more persuasive: (1) his four alcohol-related offenses (DUIs in 2004 and 2011-the 2011 DUI resulted in serious injury; impaired by alcohol for duty in 2006; and disorderly conduct in 2009 resulting in injury); (2) his reluctance to permanently abstain from alcohol consumption; (3) his binge alcohol consumption to the extent of .14 BAC in 2011; (4) his diagnosis of alcohol abuse in 2012; (5) his resumption of alcohol consumption after previous periods of abstinence and SARP attendance; and (6) credibility issues where he made excuses and did not accept full responsibility for his conduct as indicated by his claims that his battalion commander improperly imposed NJP for his distribution of Ecstasy and his Clinical Director improperly diagnosed him as alcohol dependent because she was out to get him. Based on these factors, I have lingering doubts and concerns about Applicant's current reliability, trustworthiness, and good judgment. A significant probability of alcohol-related judgment errors in the future continues to exist, and his lengthy history of alcohol consumption raises ongoing questions about his reliability and trustworthiness. See AG ¶ 21.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and

circumstances in the context of the whole person. I conclude that Guideline G security concerns are not mitigated.

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 G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Subparagraph 1.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 reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge