



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



In the matter of: )  
)  
) ISCR Case No. 18-01644  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: Allison R. Weber, Esq.

05/29/2019

**Decision**

HARVEY, Mark, Administrative Judge:

The statement of reasons (SOR) alleges, and Applicant admits he had seven misdemeanor-level arrests from 1990 to 2017. Most were related to his consumption of alcohol. He made some positive steps towards rehabilitation; however, security concerns under Guidelines G (alcohol consumption) and J (criminal conduct) are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 4, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On June 29, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an 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 Guidelines G and J. (Hearing Exhibit (HE) 2)

On August 4, 2018, 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 March 19, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 25, 2019. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered three exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 11-14; GE 1-4; Applicant Exhibit (AE) A-C) Applicant's response to the SOR was also admitted into evidence. (Transcript (Tr.) 7-8) On May 13, 2019, DOHA received a copy of the hearing transcript.

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, he admitted all of the SOR allegations. (HE 3) He also provided mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 55-year-old employee of a defense contractor who has been employed as a calibration technician for his current employer since 2008.<sup>2</sup> In 1982, he graduated from high school. He attended three semesters of college, and he completed several certified training courses. (SOR response) In 1985, he married, and in 2016, he divorced. His children were born in 1991 and 1993. In October 2016, Applicant married his second wife. (Tr. 15-16) There are two step children in his home who are ages 14 and 15. (Tr. 29) Applicant and his spouse are trying to adopt a special-needs baby with Downs Syndrome. (Tr. 33-34, 81) He has held a security clearance for about 31 years. (Tr. 83; SOR response) If he loses his security clearance, he will lose his employment. (Tr. 85)

### **Alcohol Consumption and Criminal Conduct**

The SOR alleges the following conduct of security significance.

SOR ¶ 1.a alleges in June 1990, Applicant was charged with Operating a Vehicle While Drunk. It was dark and raining, and Applicant hit a car with his motorcycle. (Tr. 45-47) Applicant received minor injuries. (Tr. 47) The car left the scene of the accident. (Tr. 46) Applicant refused a breathalyzer test. (Tr. 46) He received nonjudicial punishment under Article 15, Uniform Code of Military Justice, and a general discharge under honorable conditions because of misconduct. (Tr. 46, 48; GE 1 at 12-13) He conceded his blood-alcohol level exceeded the legal limit. (Tr. 46)

SOR ¶ 2.b alleges in November 2006, Applicant was arrested and charged with Disorderly Conduct-Brawling/Fighting-Domestic Violence. Applicant admitted SOR ¶ 2.b; however, he said the case never went to court because the charges were dismissed. (Tr.

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

<sup>2</sup> Unless stated otherwise, the source for the information in this paragraph is Applicant's Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1)

70-71; GE 3; SOR response) There is no evidence that this incident was related to his alcohol consumption.

SOR ¶ 1.b alleges in March 2009, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI). (GE 1) Applicant drank five or six rum and cokes at a bar. (Tr. 87; GE 3) The police stopped Applicant because of a traffic violation. (Tr. 50) He kept burping, and the police were unable to conduct a breathalyzer. (Tr. 50) The police did not complete the breathalyzer test or attempt to conduct a blood-alcohol test. (Tr. 51) He attended Alcoholics Anonymous (AA) meetings twice a week for six months. (Tr. 88) He was required to remain sober for one year. (Tr. 88) He successfully completed the diversion plan, and the charge was dismissed with prejudice. (Tr. 52; GE 2)

SOR ¶ 1.c alleges in August 2012, Applicant was charged with Disorderly Conduct and Criminal Trespass. (GE 1) Applicant said he drank about two drinks at a party; however, he told the Office of Personnel Management (OPM) investigator that he drank five or six drinks and that he was intoxicated. (Tr. 55, 90; GE 3) He left the party, and he followed a 16-year-old girl to her apartment which was located in the same building as the party. (Tr. 53, 90-91) At the time, he said he thought the girl he was following was an adult. (Tr. 109) She told him he could not come inside her apartment, and he went to the parking lot where his vehicle was located. (GE 3) He left the parking lot and he returned to her apartment because he said he needed to obtain directions. (Tr. 54) She told him to leave; they argued; and her father evidently called the police. (Tr. 92, 110, 115; GE 3) The owner of the apartment where the party occurred was cited for serving alcohol to minors. (Tr. 110) Applicant conceded that alcohol played a part in his decisions because if he had not been drinking he would not have needed directions. (Tr. 55-56, 92) He pleaded guilty to disorderly conduct. (GE 3)

SOR ¶ 1.d alleges in June 2013, Applicant was charged with DUI. (GE 1) The police stopped Applicant for a traffic violation. (Tr. 56-57) His blood-alcohol test (BAT) result was .187. (Tr. 57) Applicant believed he could drive, and he did not think he was "impaired" even though his BAT was .187. (Tr. 57, 93-94) Applicant was found guilty of DUI, and he was on probation for one year. (Tr. 94; GE 1; GE 3) He received a \$1,000 fine, and he was required to remain sober during his probation. (Tr. 94; GE 1) After completing probation, he reduced the number of occasions in which he drove after drinking alcohol. (Tr. 58, 95) He limited his alcohol consumption to one beer when he is going to drive. (Tr. 58) SOR ¶ 2.a cross alleges the information in SOR ¶¶ 1.a through 1.d as criminal conduct.

SOR ¶ 2.c alleges in September 2015, Applicant was arrested and charged with Domestic Battery-Knowing/Reckless Bodily Harm. (GE 1) The assault involved Applicant's first wife. (Tr. 30-32) Applicant had about two drinks of an alcohol beverage. (Tr. 72, 95) He was angry, and he pushed and kicked a door, which struck his spouse's hand. (Tr. 67-68) He claimed he did not see her when he hit her with the door. (Tr. 69) She also claimed he threw keys at her and hit her; however, he denied that the keys hit her. (Tr. 72-74) He threatened to sell the house. (Tr. 74) The part of the OPM summary of interview and the police report indicating he threatened to kill everyone in his home are incorrect. (Tr. 75, 96-97; GE 3) The police arrested him, and he was issued a 72-hour

restraining order. (Tr. 69; GE 3) His spouse wanted Applicant to come home, and the prosecutor dismissed the charges. (Tr. 70, 76; GE 1)

Applicant's current spouse met his first spouse on one occasion at a wedding, and his current spouse described his first spouse as aggressive and violent. (Tr. 30-32) His current spouse observed his first spouse as she assaulted Applicant at a wedding, and his first wife was so out of control that it was "like you see in the cartoons." (Tr. 30-31)

SOR ¶ 2.d alleges in July 2017, Applicant was charged with Domestic Battery-Bodily Harm. Applicant had gone out drinking. (Tr. 97; GE 2) His current spouse took his wallet and his identification cards and credit cards. (Tr. 98-99) She threw his wallet outside, and she locked him out of the house. (Tr. 98; GE 3) She subsequently returned his identification and credit cards to him. (Tr. 99) A day or so later, Applicant and his spouse were involved in a physical altercation. He said she was the aggressor, and he was only attempting to keep her from driving his truck. (Tr. 77) His spouse hit him, and her ring cut his face. (Tr. 78)

Applicant's spouse's description of the July 2017 altercation with Applicant was consistent with Applicant's description. Applicant's spouse said that she and Applicant argued about his alcohol consumption several days before he was arrested for assault. (Tr. 37) She took his wallet. (Tr. 37) She was anxious about when he would come home after work. (Tr. 38-39) She said she was "yelling and screaming and lying and saying he's hurting me." (Tr. 18) She said they had a "scuffle" because he took her car keys and passport and because she had taken pain medication and consumed alcohol. (Tr. 18) Her purse was in his vehicle, and it contained her passport and car keys. (Tr. 20) She attributed the altercation to her use of alcohol together with "Prozac and really high doses of steroids." (Tr. 19) She felt angry and aggressive, and she hit him. (Tr. 19-20) He was not aggressive; however, the videotape showed him not letting her in his truck and pulling her away from his truck. (Tr. 20) She believed the police arrested Applicant because he is a large person; he was yelling; and a witness made a statement against him. (Tr. 21-22) He did not punch her; however, she had "some scrapes and things." (Tr. 22) She said she lied to the police about the abuse because she was angry, and the drugs were affecting her judgment. (Tr. 22)

Applicant's spouse asked the prosecutors not to charge Applicant, nevertheless, they prosecuted him. (Tr. 23) He pleaded guilty; and he received a "deferred judgment" probation agreement. (GE 2; AE A) He received fines and court costs totaling \$482. (GE 2) His probation specified that he was not supposed to consume alcohol from February 2018 to February 2019. (Tr. 102-103; GE 2 (stating that he would "[u]se no alcohol") He said he had a single relapse; however, he did not report it to his probation officer because he did not consider it to be relevant. (Tr. 103)<sup>3</sup> His probation officer did not specifically ask him whether he consumed alcohol. (Tr. 105) He conceded violating probation was pertinent, but he did not consider it to be crucial. (Tr. 103-104) He received a deferred

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<sup>3</sup> Applicant's August 4, 2018 SOR response indicates he has "complied and continues to comply with his probation" requirements. (SOR response at 4, 6) His SOR response indicates that he "no longer drives while under the influence" of alcohol. (SOR response at 3)

sentence, and he remained on probation until February 2019. (Tr. 79) On February 28, 2019, the domestic violence offense was dismissed with prejudice. (AE A)

SOR ¶ 1.e alleges on November 28, 2017, Applicant stated at an OPM interview that he drank alcohol every day, and he drank alcohol to intoxication every other week. (GE 3) Applicant admitted that he drank three or four beers almost every day, and every other weekend he drank seven or eight beers. (Tr. 59-60; GE 3) In the past five years, Applicant drank enough alcohol to have blackouts once or twice. (Tr. 115) Applicant's spouse said he reduced his alcohol consumption in 2017. (Tr. 16)

On March 30, 2018, Applicant received an alcohol use assessment.<sup>4</sup> It did not recommend counseling or treatment. (Tr. 105) He reported his arrests in 2006, 2011, 2013, and 2017 to security. He said he drank two to six drinks twice a week. He completed alcohol treatment or counseling in 2006 and 2013.

Applicant said he attends counseling once a week or more often as needed, meditation, and Alcoholics Anonymous (AA) meetings as needed. (Tr. 63, 82) He most recently attended an AA meeting three weeks before his hearing. (Tr. 113-114) He said he attends AA meetings once or twice a month; however, he did not attend enough AA meetings to receive any AA coins. (Tr. 114) In May 2018, he completed a class on domestic violence.

More recently, Applicant used Uber or public transportation in lieu of driving himself after he consumes alcohol. (Tr. 26-27) Applicant said he decided to quit consuming alcohol in 2017, and he actually stopped drinking "[a]bout that time." (Tr. 101, 116-117) He subsequently had a couple of relapses. (Tr. 101, 106, 117-118) He said the last time he consumed alcohol was in August 2018. (Tr. 102, 106, 118)<sup>5</sup> His spouse also stopped consuming alcohol, and they do not have alcohol in their home. (Tr. 17) They do not go to bars. (Tr. 25) Applicant does not intend to drink alcohol in the future. (Tr. 111)

## **Character Evidence**

In the winter of 2017, Applicant's spouse had major surgery. (Tr. 18) After she married Applicant, she had a stroke, transient ischemic attacks or TIAs, an embolism, broken bones from a fall, a Methicillin-resistant Staphylococcus aureus (MRSA) infection, and blood clots. (Tr. 27-28) She spent 41 days in intensive care. (Tr. 28) She was bedridden for a time. (Tr. 28) She said the post-surgery drugs affected her memory. (Tr. 18) Applicant has been very supportive of her. (Tr. 18-28) He attended marriage counseling and classes. (Tr. 23) She supported approval of his security clearance. (Tr. 36, 43-44)

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<sup>4</sup> Unless stated otherwise, the source for the information in this paragraph is an alcohol assessment on March 30, 2018. (SOR response)

<sup>5</sup> Applicant's spouse did not pay attention to the amount of beer he drank. (Tr. 41) She did not notice when he stopped drinking alcohol for several weeks. (Tr. 42) She was unable to say whether he stopped drinking alcohol in 2017, 2018, or 2019. (Tr. 43)

Applicant's 2017 and 2018 performance reviews indicate he exceeds expectations or meets expectations for all categories. (AE B; SOR response) The general sense of the statements of six of Applicant's coworkers, a family support worker, and friends is that he is diligent, reliable, peaceful, dedicated, intelligent, professional, and compliant with procedural requirements. (AE C; SOR response)

## **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 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.<sup>6</sup>

AG ¶¶ 22(a) and 22(c) apply. Applicant's SOR in ¶¶ 1.a through 1.d allege and the record establishes four alcohol-related incidents involving the police, courts, or his command from 1990 to 2013. His BACs for three of the four alcohol-related incidents are unknown. His BAC for the June 2013 DUI was .187, and it establishes that he engaged in binge-alcohol consumption to the extent of impaired judgment.<sup>7</sup>

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

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<sup>6</sup> Applicant's SOR does not allege: (1) his domestic battery in 2015 (SOR ¶ 2.c) as being alcohol-related; (2) his violation of probation by consuming alcohol; and (3) his alcohol-related blackout in the previous five years. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). These three non-SOR alcohol-related concerns will not be considered except for the five purposes listed above.

<sup>7</sup> "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 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.



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 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 also 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).

In the last five years, Appellant drank sufficient alcohol to have a blackout. Alcohol-related blackouts are a consequence of binge-alcohol consumption. During an alcohol-related blackout, a person:

is still fully conscious. They're moving around, acting, engaging, talking, dancing, driving, engaging in all kinds of behavior, but because of alcohol's inhibition of the transfer of information from short-term memory to long-term memory, they simply will be unable to remember those decisions or actions they made while in the blackout.<sup>8</sup>

A person who is in blacked-out state, may still "engage in voluntary behavior and thought processes. 'They might make decisions, for example, to drive home from a bar, or [engage in other] . . . activities which require complex cognitive abilities, but the

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<sup>8</sup> In *United States v. Pease*, 74 M.J. 763, 769 (N-M. Ct. Crim. App. 2015), an expert on the effects of alcohol intoxication, Dr. Kim Fromme, Ph.D., described the levels of alcohol intoxication and the impact on human behavior, cognitive abilities, and memory. See also *United States v. Collins*, No. 201000020, 2011 CCA LEXIS 22 at \*4-\*8. (N-M. Ct. Crim. App. 2011) (unpub.) (testimony of prosecution toxicology expert, Jon Jemiomek).

individual might not remember the next day and might, in fact, might regret it.”<sup>9</sup> A person who consumes alcohol to a blacked out state may not remember how much alcohol they consumed, or they may violate national security and have no recollection of their conduct.

Applicant presented evidence supporting mitigation of alcohol-consumption concerns. Applicant said he attends alcohol-related counseling once a week or more often as needed, meditation, and AA meetings as needed. On March 30, 2018, Applicant received an alcohol use assessment. (SOR response) It did not recommend counseling or treatment. In his evaluation, he disclosed that he drank two to six drinks twice a week. He completed alcohol treatment or counseling in 2006 and 2013. As of his March 30, 2018 assessment, his most recent alcohol use was in December 2017.

The evidence against mitigation is more persuasive. Applicant was involved in a total of five alcohol-related incidents from 1990 to 2015. His probation for his July 2017 domestic battery specified that he was not permitted to consume alcohol from February 2018 to February 2019. He said he had a single relapse; however, he did not report it to his probation officer because he did not consider it to be relevant. He said the last time he consumed alcohol was in August 2018, and he does not intend to drink alcohol in the future.

Six factors weigh against mitigation of alcohol consumption security concerns: (1) Applicant’s five alcohol-related arrests; (2) his reluctance to permanently abstain from alcohol consumption; (3) his binge-alcohol consumption; (4) his resumption of alcohol consumption after previous periods of abstinence and alcohol-counseling attendances; (5) his violation of probation by consumption of alcohol, and his failure to disclose that violation to his probation officer; and (6) his abstention from alcohol consumption for less than one year. I have carefully considered the Appeal Board’s jurisprudence on alcohol consumption and Applicant’s history of alcohol consumption. 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.

## **Criminal Conduct**

AG ¶ 30 describes the security concern about criminal conduct, “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.”

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (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

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<sup>9</sup> Pease, 74 M.J. at 769. See also *United States v. Clark*, NMCCA 201400232 at \*13-\*17, \*22-\*23. (NMCCA Jul. 14, 2015) (statements of Dr. Stafford Henry, M.D. and Dr. Thomas Grieger, M.D.).

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.

The SOR alleges, and Applicant admitted he was arrested for misdemeanor-level criminal conduct seven times from 1990 to 2017. AG ¶¶ 31(a) and 31(b) are established.

AG ¶ 32 lists conditions that could mitigate 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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

None of the mitigating conditions are established for the reasons discussed in the alcohol consumption section. Five of the seven incidents of criminal conduct are alcohol related. For the reasons stated in the section concerning Guideline G, he failed to establish mitigation under Guideline J.

### **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 Guidelines G and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 55-year-old employee of a defense contractor who has been employed as a calibration technician for his current employer since 2008. He has three semesters of college, and he completed several certified training courses. He has held a security clearance for about 31 years. There is no evidence of security violations. His spouse had multiple serious illnesses, and he has been very supportive of her. He attended marriage counseling and classes. She supported approval of his security clearance. His 2017 and 2018 performance reviews indicate he exceeds expectations or meets expectations for all categories. The general sense of the statements of six of Applicant’s coworkers, a family support worker, and friends is that he is diligent, reliable, peaceful, dedicated, intelligent, professional, and compliant with procedural requirements,

The six factors listed in the alcohol consumption section, *supra*, weigh against granting Applicant access to classified information. The three most important factors are: he has a lengthy history of five alcohol-related arrests from 1990 to 2015; he relapsed after abstaining from alcohol consumption; and his current abstinence from alcohol consumption is for less than one year before his hearing. 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 this possibility of future judgment errors 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 Guidelines G and J 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.e:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARK HARVEY  
Administrative Judge