



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



In the matter of:)
)
) ISCR Case No. 19-03190
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq. Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

08/18/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has five arrests for alcohol-related driving offenses between September 2007 and October 2018, and a September 2019 diagnosis of moderate alcohol use disorder. He did not provide sufficient evidence to mitigate the resulting security concerns about his alcohol consumption and related criminal conduct. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 20, 2016. On February 21, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guidelines G (alcohol involvement) and J (criminal conduct). The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) implemented by the DOD on June 8, 2017.

Through counsel, Applicant answered the SOR on or about August 17, 2020, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on February 17, 2021. On March 12, 2021, DOHA issued a notice scheduling the hearing for April 6, 2021.

On March 15, 2021, I issued a case management order to the parties by e-mail. It concerned procedural matters relating to the health and safety of the hearing participants due to the COVID-19 pandemic, as well as the pre-hearing exchange and submission of proposed exhibits.

The hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1-11. GE 1-3, and GE 5-9 were admitted without objection. (Tr. 26) GE 4 (Tr. 19-26) and GE 10 (Tr. 18-19) were admitted over objections. The objection to admission of GE 11 was sustained. (Tr. 18) Applicant testified and offered five exhibits, which were marked as Applicant's Exhibits (AE) A – E and admitted without objection. (Tr. 27-28) DOHA received the transcript (Tr.) on April 16, 2021.

I held the record open after the hearing to allow Applicant to submit additional documentation. He submitted AE F (April 14, 2021 letter from the defense attorney in Applicant's most recent case regarding probation status); AE G (April 9, 2021 e-mail from Applicant to state probation officer regarding probation status); and AE H (April 9, 2021 statement of intent from Applicant); all of which were admitted without objection. (Hearing Exhibit (HE) II) The record closed on April 22, 2021.

Amendments to the SOR

At the conclusion of the hearing, Department Counsel moved to amend certain allegations in the SOR to conform them to the record evidence. A courtesy copy of the SOR, with likely amendments, was provided prior to the hearing, and is placed in the record, along with my related e-mail in response, as HE I. (Tr. 10) The amendments are addressed as follows:

SOR ¶ 1.b concerns Applicant's arrest for driving under the influence (DUI) in April 2010. The second sentence (emphasis added) originally read: "You were convicted in August 2010 and received probation before judgment." The proposed amendment would have changed the wording to: "You plead[ed] guilty in August 2010 and received probation before judgment." This motion was denied, as the amendment is not clearly established by the record evidence, since Applicant testified that he pleaded "no contest" to the charge (though GE 5 suggests a guilty plea) (GE 5; Tr. 46, 86, 112-113) The fact of the offense itself is not in dispute, so the specific circumstances of the disposition are of little import.

SOR ¶ 1.c concerns Applicant's DUI arrest in July 2012, by U.S. military police. Applicant testified; however, that the arrest did not occur "on post" as alleged (and as reflected in the police report, since he was outside the gates of the base when he was stopped. (GE 6) The phrase "on post" was deleted from the text of SOR ¶ 1.d, without objection. (Tr. 114)

SOR ¶ 1.e concerns Applicant's arrest in October 2018. Without objection, the amendment revised the wording of the charge from "driving while under the influence of alcohol" to "driving vehicle while impaired by alcohol" to conform to the charging documents in the record. (Tr. 114-115; GE 9)

SOR ¶ 1.f concerns certain findings from a September 2019 psychological evaluation, GE 4. The SOR amendment changed one word in the second sentence of SOR ¶ 1.f (from "is moderate" to "seems moderate") to reflect the correct wording in GE 4. It also changed one word in the third sentence of SOR ¶ 1.f (from "suggests" to "suggest,") to correct a grammatical error. These amendments were accepted without objection. (Tr. 115-117)

Findings of Fact

In answering the original SOR, Applicant admitted SOR ¶¶ 1.a and 1.d. He partially admitted and partially denied SOR ¶¶ 1.b, 1.c, and 1.e. He denied SOR ¶ 1.f. His answers to each allegation included explanations. He did not address the cross-allegation at SOR ¶ 2.a, but I incorporate his admissions, denials, and explanations to the underlying allegations in SOR ¶ 1, accordingly. Applicant's SOR admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 42 years old. He and his wife married in March 2019. They have no children. (Tr. 32, 37) He earned a bachelor's degree in 2002. After a brief period of self-employment in 2003, he worked from September 2003 to September 2004 as a civilian engineer (GS-5) for a Navy command in a state far from his home. From September 2004 to January 2013, he worked for a DOD agency, starting as an intern and rising to GS-14. Applicant then worked for a defense contractor until November 2015, when he was laid off. He was then unemployed until March 2016. He has worked for various employers in the defense industry since March 2016, and has worked for his current employer since 2018. (Tr. 30-33, 81-84; GE 1 at 11-14; GE 2 at 20-23) He has held a security clearance since about 2004. (GE 1 at 37-40; Tr. 9, 36) He most recently submitted SCAs in October 2009 and December 2016. (GE 2, GE 1) He has an annual salary of \$195,000. (Tr. 83)

In September 2007, Applicant drove to a town in a neighboring state for a car show. Before returning home that night, he stopped at a restaurant for dinner and drinks. He fell asleep at the wheel while driving home and drove into a ditch. Police came to the scene and he was arrested for DUI. (SOR ¶ 1.a) He spent the night in jail and returned home the next morning (Tr. 37-38, 42, 84-85) Applicant testified that he did not recall how much he had to drink that evening because it was so long ago. (Tr. 39) Records referenced in his September 2019 psychological evaluation indicate that "he had four to five beers and then drove home" from the car show. (GE 4 at 3)

Applicant later went to court, and was offered a plea agreement under which he was to complete an alcohol education course, pay a fine, and serve a year of probation, after which the case would be dismissed. Applicant completed the alcohol education

course near his home, completed probation successfully and the case was closed. (Tr. 39-40, 42, 70, 85-86; GE 2 at 46) Applicant disclosed the offense to his DOD employer and on his 2009 SCA. (Tr. 40-41; GE 2 at 45)

In April 2010, Applicant was pulled over for speeding on his way home from dinner at a restaurant. He was arrested and charged with DUI after a field sobriety test. (Tr. 70-71)(SOR ¶ 1.b) He testified that he pleaded no contest, and he received probation before judgment (PBJ), served one year of probation, and had to attend a six-week alcohol education course. (Tr. 45, 86) The Government's evidence reflected that he pleaded guilty, rather than no contest, though Applicant "distinctly" recalled it was the latter. (GE 5; Tr. 46, 86) Applicant believed his probation ended without incident, but was not specifically aware of how the case ended. He reported the offense to his DOD employer. (Tr. 46-47, 86, 88-89; GE 3)

In July 2012, Applicant was driving home, past 11:00 p.m., after having dinner at a restaurant. While driving home, he noticed a car tailing him and following his movements. He pulled over when he saw emergency lights in his rearview mirror. He refused a field sobriety test and was taken into custody. The police report reflects that the officer detected "a strong odor of alcohol emitting from [Applicant's] person." He also was lethargic and showed signs of slurred speech. He took a breathalyzer test at the police station, and registered a 0.13 blood alcohol content. (GE 7 at 5) He was arrested and charged with DUI, and some traffic offenses. (Tr. 48-52, 73-74, 87; GE 7 at 9,) (SOR ¶ 1.c)

The arresting officer was a military policeman, and the road where Applicant was stopped was evidently near to, or adjacent to, a U.S. military base. Applicant testified that he was never "on post" as reflected in the police report. (Tr. 87; GE 6) Given the location of the incident, Applicant appeared in federal court, where he pleaded guilty to a lesser charge of reckless driving and fined about \$500. The various DUI charges and other traffic offenses were all dismissed and judgments of acquittal were entered. (GE 7) Applicant informed his DOD employer about the arrest. (Tr. 51, 88; GE 3)

In September 2015, Applicant was pulled over for speeding after driving home from a concert. The report from his September 2019 psychological evaluation (discussed below) indicates that he had five or six beers at the concert. (GE 4 at 4) He was arrested by state police, charged with DUI, and released. (SOR ¶ 1.d) Applicant testified that the charge was ultimately dismissed when the arresting officer did not appear in court. (Tr. 52-55, 72-74, 89; GE 8) He said he voluntarily enrolled in a 26-week adult education course on his lawyer's advice. (Tr. 54, 89, 90) He self-reported the arrest to his employer, a defense contractor. (Tr. 54; GE 3)

In October 2018, on his last day of work with his prior employer, Applicant met some future co-workers at a restaurant for drinks and dinner. He was pulled over while driving home. He refused the field sobriety test and was taken to the police station, where he was arrested and charged with driving a vehicle while impaired by alcohol (DWIA) after taking a breathalyzer test. (GE 9; Tr. 74-75, 90)(SOR ¶ 1.e) He

acknowledged having more than one drink that evening. (Tr. 55-56) He self-reported the arrest to his new employer. (Tr. 57)

In January 2019, Applicant went to court and pleaded guilty to DWI. He was sentenced to 60 days in jail (50 days suspended) and fined about \$800. He spent 10 days in a weekend work-release program. He was also sentenced to 18 months of supervised probation, ordered to install an ignition interlock device on his car, and required to attend 26 weeks of alcohol-education classes and a Mothers Against Drunk Driving (MADD) panel. (Tr. 56-58, 90-93; GE 9; AE A)

Applicant completed the alcohol-education classes at a counseling center in June 2019. The evaluations and screening assessments he received “did not indicate a substance dependency disorder.” (AE A) The discharge report notes Applicant’s motivated and positive participation in the program. He “acknowledged the need for change in his own life,” learned about the impact of alcohol abuse on himself and his family, and of strategies to make safer decisions in the future. (AE A)

Applicant testified that his probation was abated after 12 months. (Tr. 57, 92-93) A letter from Applicant’s defense attorney from the case noted that the state did not provide documentation of successful completion of probation, but he noted that Applicant’s probation expired in July 2020. (AE F, AE G)

During the course of his 2019 security clearance investigation, Applicant was ordered by the DOD Consolidated Adjudications Facility (DOD CAF) to participate in a psychological evaluation, in September 2019. (GE 4; Tr. 67) He was evaluated by a licensed clinical psychologist, Dr. B, who was asked to evaluate whether Applicant has “any medical, psychological, psychiatric, emotional, or substance abuse conditions which could impair his judgment, reliability, or trustworthiness[.]” (GE 4 at 1)

Dr. B diagnosed Applicant with moderate alcohol use disorder. (GE 4 at 7) In detailing the basis for her opinion, she noted that:

[Applicant] has a significant history of alcohol use, beginning in 2003, and he received 5 DUIs between 2007 and 2018. After each incident, he was required to complete alcohol abuse classes, however, he has never enrolled in an intensive substance abuse treatment program. Despite his notable history of criminal conduct with alcohol, he has continued to drink. He does attend weekly AA meetings, yet he admitted that he still has not accepted his alcoholism. (GE 4 at 1)

This was based upon Dr. B’s review of Applicant’s personal and social information, educational information, medical information, substance abuse history, legal and mental health information provided by the DOD CAF, as well as her clinical observations, a clinical interview, and his psychological test results. (GE 4) Dr. B’s opinion is the basis for SOR ¶ 1.f. Dr. B concluded that

The risk of future alcohol-related incidents seems moderate. [Applicant] attends regular AA meetings and feels he is able to adequately manage his drinking; however, his behavioral health history and current lack of concern about his drinking suggests a guarded prognosis. As such, his diagnosis could pose a risk to his judgment, reliability, or trustworthiness concerning classified information. (GE 4 at 7)

Applicant denied being terminated from employment due to alcohol issues or poor performance. (Tr. 33-37) In Dr. B's report, she referenced employment records indicating that Applicant's termination in 2015 was due to such issues, but she also noted that Applicant denied this in interviews with her, as he did at hearing. (GE 4 at 2) There is no corroborating documentation from the employer in the record on this issue, and it is not alleged that Applicant ever had employment issues related to alcohol, so I will not make such a conclusion.

Dr. B also noted Applicant's historical drinking pattern. She found that between 2003 and 2010, he went on "drinking binges" on a monthly basis, where he would drink "intermittently" throughout the weekend. From 2010 to 2015, he drank mostly on weekends often consuming 6-7 beers a night. Dr. B found that Applicant's drinking had tapered off significantly after he met his wife (in 2016), as he consumed one to two drinks on weekends. From October 2018 to January 2019, he abstained from alcohol, but then resumed drinking again. (GE 2 at 3)

In March 2021, Applicant participated in another psychological evaluation, at the suggestion of his attorney, in preparation for this hearing. He was evaluated by a licensed doctor of clinical psychology (Psy.D), Dr. W. (AE C, AE D; Tr. 67))

Dr. W's basis for her opinion was a review of background information, including Dr. B's evaluation, review of Applicant's personal and social information, educational information, medical and mental health information, substance use history, and legal information, including court records from his arrests from 2010-2018, as well as her clinical observations, a clinical interview, and his psychological test results. (AE C)

Dr. W agreed with Dr. B's findings in her 2019 evaluation. (AE C at 6) Dr. W noted that Applicant had significantly reduced his use of alcohol since 2019, and no longer engaged in binge drinking. (AE C at 7) She found that he continued to meet the criteria for moderate alcohol use disorder, though now in sustained remission. Dr. W's prognosis for Applicant is guarded. (AE C at 7-8; Tr. 79)

Dr. W's report notes that Applicant consumed six or more beers at his bachelor party, in February 2019, about a month after pleading guilty in his most recent alcohol case. (Tr. 94-95; AE C at 3) He was on probation at the time but was not prohibited from consuming alcohol. (Tr. 96-97)

During his hearing, Applicant described his current alcohol usage as "pretty low." He said he drinks at home with family members or close friends, about once or twice a month. (Tr. 60-62) He said that prior to his 2015 DUI, he would drink as a "social

lubricant.” He said his habits changed in 2016, when he met the woman who is now his wife. He began to frequent restaurants less often and engaged in more couples and family activities that did not involve alcohol. (Tr. 60-61) He said he did not drink much at all during 2019 and 2020, but for New Year’s Eve (Jan. 2020). (Tr. 61) He said when he drinks, he has one or two drinks, and has not had more than two beers since his wedding in 2019. (Tr. 62-63, 76-77)

Applicant testified that the 2018 DUI was an “outlier, in that it was specifically to celebrate a promotion.” He acknowledged making a “stupid decision” to drink and drive that evening. (Tr. 63, 101-102) Applicant acknowledged that alcohol has disrupted his life. He wants his wife and family to see him as a role model. Applicant also acknowledged health issues that he wants to improve. He knows that “alcohol has been a problem for me in the past, and I don’t want it to control my life.” (Tr. 64)

Applicant attended Alcoholics Anonymous (AA) between October 2018 and March 2020, when the COVID-19 pandemic led him to end social gatherings. (GE 4 at 3; AE C at 3) He was not aware that he could have attended online AA meetings rather than in-person meetings. He does not have an AA sponsor, and did not “work the steps” of AA’s 12-step program. (Tr. 64-65, 77-78, 80, 99-100) He noted to Dr. W that he intended to resume AA meetings when it is safe to do so (as related to the pandemic). (AE C at 3) Applicant also testified that his wife and family members are aware of his issues and are a good support network for him. He vowed never to drink and drive. (Tr. 65-66, 68-69, 97-98)

Applicant asserted several times during the hearing that he had been using alcohol as a “social lubricant” but no longer feels the need to do so now that he has met his wife, since they do many things together that do not involve alcohol. He also considers his 2015 DUI to be “a wakeup call” that led him to decrease his alcohol intake. (Tr. 100-101)

Applicant does not intend to increase his alcohol intake beyond the CDC’s recommendations (two-drink maximum per sitting, no more than 14 drinks in a week) as noted by Dr. W. in her report, and Applicant may decrease drinking in the future. (Tr. 105, AE C) He does not believe he will have trouble controlling his future alcohol intake. (Tr. 105-107)

Applicant provided a “Statement of Intent” regarding his future alcohol intake. He promised never to abuse alcohol (binge drink or drink to excess); to use alcohol responsibly (within CDC guidelines); and to never operate a vehicle after using alcohol. If he is found to have violated these terms, he consented to the automatic revocation of his clearance or eligibility for a position of trust. (AE H)

Applicant testified that he has a valid driver’s license, but that it has an alcohol restriction, meaning that a state medical evaluation board had determined that “I shouldn’t drive with any alcohol in my system.” He no longer has an ignition interlock device on his car. (Tr. 102-104)

In December 2019, Applicant was pulled over for speeding while driving on an interstate highway. He was driving 80 mph in a 65-mph zone. He said he had been out shopping with his wife. He acknowledged guilt by pre-paying the fine. (GE 10) He said he had not been drinking, and noted that he could not have been, since the ignition interlock was installed in his car. (Tr. 58-60, 107-108) No alcohol-related charges or citations are noted on GE 10, and this traffic offense is not alleged in the SOR.

Applicant's wife wrote a strong recommendation letter in support of her husband. He is supportive and loving. He has been an excellent caregiver for their parents. During the pandemic, she has observed him to be an excellent coach and guide for other workers while working from home. He is a diligent worker. They had serious conversations after his 2018 arrest, which made her "livid." She attested that he has significantly curtailed his drinking habits after his 2018 DWI, and is now more responsible. She believes he is a changed man and she recommends he maintain his clearance. (AE E)

Several other work references, including supervisors, peers, and friends, also wrote letters of recommendation in support of his eligibility for a clearance. They regard Applicant as trustworthy and of good character. He is committed to country, family, and friends. He is hard-working and dedicated, and follows rules and regulations. (AE B)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988)

The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set forth in AG ¶ 21:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 22. The following disqualifying condition is applicable in this case:

(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 an 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; and

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

Applicant has five arrests for alcohol-related offenses between September 2007 and October 2018, a period of 11 years. AG ¶ 22(a) applies.

Applicant has a long history of problematic alcohol involvement. His alcohol-related offenses are examples of conduct stemming from Applicant's impaired judgment. Dr. B specifically found that Applicant went on drinking binges on a monthly basis between 2003 and 2010. Dr. W noted that Applicant had significantly reduced his use of alcohol since 2019, and no longer engages in binge drinking. Nevertheless, Applicant has a history of habitual or binge consumption of alcohol to the point of impaired judgment. AG ¶ 22(c) applies.

AG ¶ 22(d) applies to Applicant's diagnosis of moderate alcohol abuse disorder, by Dr. B, in September 2019. AG ¶ 22(d) might also apply to Dr. W's March 2021 diagnosis of moderate alcohol use disorder, in sustained remission, but that more recent diagnosis was not alleged, as it post-dates the SOR.

Conditions that could mitigate alcohol consumption security concerns are provided under AG ¶ 23. The following are potentially applicable:

- (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; 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.

Applicant has a long and troubled history of alcohol involvement. His drinking has led to five alcohol-related arrests in 11 years. He has been arrested about every three years, most recently in October 2018 – less than three years ago. Applicant attested that his 2015 DUI arrest was a “wakeup call” that led him to decrease his alcohol intake. Yet he incurred a DWIA in October 2018. He attests that this most recent offense was an “outlier.” The record does not support this assessment, as it seems more to continue his pattern of alcohol-related arrests. It may be that Applicant's marriage, and his wife's understandably livid reaction to his conduct will serve as a real “wakeup call.” But the fact remains that Applicant's history and pattern of DUIs is too established, and his latest offense is too recent to mitigate. He did not establish that his offenses occurred under unusual circumstances, that his alcohol-related misconduct is unlikely to recur, or that it no longer casts doubt on his current reliability, trustworthiness, or judgment. AG ¶ 23(a) does not apply.

Applicant gets some credit under AG ¶ 22(b) for his decreased alcohol intake in recent years. He no longer engages in binge drinking, and he and his wife engage in activities together that do not involve alcohol. His diagnosis of moderate alcohol use disorder is now in sustained remission, according to Dr. W. However, both Dr. B and Dr. W found that, given his alcohol history and his behavior, Applicant's prognosis remains guarded. As of the close of the record, Applicant has a good family support network, but he has not resumed participation in AA, nor has he fully dedicated himself to its principles. Admittedly, in-person AA participation has likely been difficult, if not impossible, in the ongoing pandemic environment, but Applicant does not have a

sponsor whom he might rely on to work around this obstacle. Moreover, he has had multiple opportunities to benefit from alcohol education (as part of most of his sentences after his DUIs), but to little effect. With Applicant's history and pattern of DUIs as a backdrop, AG ¶ 22(b) is not fully applicable, as he has not demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has engaged in, and completed alcohol-education classes after most of his arrests, and has some prior participation in AA, but he but he has not participated in, or completed, a treatment program, along with required aftercare program. He is not currently in treatment or counseling for his alcohol issues. AG ¶ 22(d) does not apply. Applicant did not provide sufficient evidence to mitigate the alcohol consumption security concerns.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for 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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

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

Applicant has five arrests between 2007 and 2018, all for alcohol-related offenses. AG ¶¶ 31(a) and 31(b) apply.

The following mitigating conditions for criminal conduct are potentially applicable under AG ¶ 32:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution,

compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's long-term alcohol issues have led to five arrests between September 2007 and October 2018. His alcohol issues and criminal conduct are significantly intertwined. His criminal conduct is repeated, of a similar nature, and is recent. His prior actions continue to cast doubt on his current judgment, trustworthiness, and reliability. He has an excellent work record. He has a good family support network. But more time without any alcohol-related misconduct is needed to establish that his pattern of alcohol-related driving offenses will not recur. He has not established that either mitigating condition AG ¶¶ 32(a) or 32(d) should apply. For the same reasons as set forth above under Guideline G, Applicant did not provide sufficient evidence to mitigate the criminal conduct security concerns.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and J in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Applicant's alcohol-related offenses are simply too numerous, too similar, and too recent to warrant a finding that they are mitigated. All of his arrests have come about three years apart. His most recent arrest was less than three years ago. He attests that he has changed and credits his marriage with changing his lifestyle. This may be the case, but this is undercut by the timing of his most recent arrest. The risk of recurrence is too great at this time for him to overcome. He needs to establish a significant,

sustained track record of abstinence or sobriety, supported by appropriate counseling or treatment, and a favorable prognosis, as well as a track record of compliance with the law before he can be considered a suitable candidate for access to classified information. Applicant did not mitigate the alcohol involvement or criminal conduct security concerns. Eligibility for access to classified information is denied.

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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge