



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-02903
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Patrick Korody, Esq.

09/21/2021

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and hearing testimony, Applicant did not mitigate alcohol consumption and personal conduct concerns. Criminal conduct concerns are mitigated. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On December 4, 2020, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the alcohol consumption, criminal conduct, and personal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A 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.

Applicant responded to the SOR on December 3, 2020 and requested a hearing. The case was assigned to me on May 6, 2021. A hearing was scheduled for June 8, 2021, by video teleconference, and heard on the same date. At the hearing, the Government's case consisted of two exhibits. (GEs 1-2) Applicant relied on seven exhibits (AEs A-G) and two witnesses (including himself). The transcript was received on June 28, 2021. Following the hearing, an additional exhibit (a substance use assessment) was located and admitted without objection as AE H.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record as needed. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded two days to respond. Applicant elected not to supplement the record.

Summary of Pleadings

Under Guideline G, Applicant allegedly (a) was arrested in August 2016 for driving under the influence (DUI); (b) consumed alcohol throughout the day preceding his scheduled personal subject interview (PSI) in February 2019; and (c) was observed by an authorized national background investigator as having arrived for his scheduled February 2019 PSI smelling of alcohol. Allegedly, Applicant was well-aware of DoD requirements of avoiding consumption of alcohol products before appearing for a PSI or other official event.

Under Guideline J, Applicant allegedly was arrested in April 2016 in another state after pistol-whipping his wife in the head. Allegedly, he was charged with battery-family violence and cruelty to children as a result of the reported incident.

Under Guideline E, Applicant allegedly (a) provided materially false statements to an investigator of the Office of Personnel Management (OPM) in a February 2019 interview when he falsely stated he had stopped consuming alcohol and smoking cigarettes shortly before arriving in a foreign country because he wanted to better his overall health. Allegedly, he (a) concealed his consumption of alcohol prior to his scheduled OPM interview and (b) provided materially false statements to an OPM investigator in a February 2019 OPM interview when he falsely stated that he emailed the investigator the day of his interview to explain his failure to meet at his scheduled interview time, omitting his real reason for being late to his interview due to his oversleeping attributable to his being up late and consuming alcohol.

In his response to the SOR, Applicant admitted each of the allegations covered by SOR guidelines G and J with explanations and clarifications. He claimed he did not consume alcohol "until 1:00 AM" on the day scheduled for his OPM interview. Further, he claimed he had consumed beer the night before his scheduled OPM interview. And, he denied the allegation containing the language "pistol whipping" his wife with a handgun. Applicant denied the falsification allegations covered by SOR ¶¶ 3.a and 3.b without any explanations.

Findings of Fact

Applicant is a 31-year-old armed guard for a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in December 2016 and has one child (age three) and two stepchildren from this marriage. (GE 1; Tr. 64-65) While Applicant and his wife are still married, they live separately and share time and financial support of their daughter as co-parents without any court guidance. (AE H; Tr. 74-78, 83-86) Applicant attributed his estranged relationship with his wife to his wife's infidelity. (Tr. 79)

Applicant earned his general educational diploma (GED) after returning with his father from overseas Army deployment. (Tr. 62-63) He completed on-line correspondence courses between March 2008 and May 2008, but earned no degrees or diplomas. (GE 1) He reported no military service.

Between October 2018 and December 2020, Applicant was employed by another defense contractor. (GEs 1-2 and HE 1) After separating from this defense contractor, the employer terminated its sponsorship of Applicant for a security clearance. (HE 1) From January 2009 to October 2018, he was employed by other non-defense contractors in various jobs. (GE 1; Tr. 64-72) His prospective employer is holding a job for him, conditioned on his obtaining a security clearance, and is sponsoring him for a clearance. (GEs 1-2 and AE E and HE 1)

Applicant's alcohol consumption and arrest-history

Both before and after their marriage in December 2016, Applicant and his girlfriend, and later wife, consumed alcohol regularly when together. (Tr. 79-80) Acknowledging the adverse effects the drinking had on their relationship, Applicant attributed their drinking to their persistent arguing over their finances and "just bad situations." (Tr. 79)

Applicant was involved in two alcohol-related incidents in 2016. (GEs 1-2 and AE D) The first incident occurred in August 2016 and resulted in his arrest and domestic violence charges. (GEs 1-2 and AE D; Tr. 50-51, 80-82) The charges involved battery-domestic violence, for which Applicant was charged with pistol-whipping his girlfriend at the time in her head with his handgun (a 9mm Glock 19 pistol). (GEs 1-2 and AE D; Tr. 112-116) Court records document the misdemeanor charges being *nolle prossed* in September 2016 based on his girlfriend's unwillingness to press her charges. (AE D)

The stories of the parties to the 2016 domestic violence incident differ considerably. According to Applicant's account taken from a summary of his personal subject interview (PSI) with an agent of the OPM, he and his girlfriend at the time

became embroiled in a heated domestic dispute. (GE 2) Arguments raged over Applicant's losing his job the previous month and his finding a text message from his girlfriend to one of Applicant's friends. As the arguments between the two intensified, he grabbed his unloaded pistol and began striking his girlfriend in the temple region of her head, causing her to bleed without losing consciousness. (GE 2)

Still conscious from the blow to her head, Applicant's girlfriend called police, who answered the call at their residence. (GE 2) Police who responded to the girlfriend's call canvassed the home and took statements from the participants before arresting Applicant and charging him with battery-family violence and cruelty to children. (GE 2)

Appearing in court for his scheduled September 2016 court hearing, Applicant was advised that the domestic violence charges filed against him were *nolle prossed*. (AE D) No reason was assigned for the Government's dropping of its charges. (AE D) While documented police accounts do not assign any alcohol role to Applicant's actions, Applicant admitted to drinking two to three beers before striking his girlfriend. Without more information, alcohol cannot be ruled out as a contributing factor in assessing Applicant's actions associated with the domestic violence incident. (GE 2 and AE D)

Asked about the domestic violence incident at hearing, Applicant employed a bit of semantical spin on the pistol-whipping characterization attributed to him by arresting police. (GE 2) Denying any intent to physically injure his girlfriend when waving his unloaded pistol around her head, he claimed he checked the wrong box (approving the wording in the OPM investigator's summary of his PSI). He assured that he did not use the pistol-whipping words attributed to him in his PSI summary. (Tr. 116) Acknowledging he had consumed two or three beers during the evening of the August 2016 incident, he dismissed and minimized his attributed actions. Meaning no harm to his girlfriend, he claimed in his hearing testimony that he accidentally grazed her head with his pistol while waving the pistol in the air to convince her he was serious about the points he was making ("more like a jab or just talking with my hands"), that caused "a little cut on the side of her head." (Tr. 81, 114)

Resolving all close interpretations in Applicant's favor, his hearing revisions cannot be fairly reconciled with the intentional or reckless endangerment language attributable to him in his PSI summary. That his girlfriend and wife to be later declined to press charges against him does not change or alter the plain import of the pistol-whipping words he employed in his PSI summary to describe the actions attributable to him. (GE 2; Tr. 73-74) Under these carefully considered circumstances, inferences are warranted that Applicant's actions directed at his girlfriend during the charged August 2016 domestic violence encounter were either intentionally or recklessly initiated with the foreseeable likelihood of inflicting bodily harm upon her and endangering his child.

In August 2016, shortly after his domestic violence incident with his girlfriend had been court-discharged, Applicant was involved in another alcohol-related incident. Preceding his arrest, Applicant was driving his girlfriend home following a meeting with her probation officer on her prior DUI citation, when he stopped at a corner store to purchase a can of beer. (GE 2; Tr. 83, 117-119) Upon returning to his car, he

proceeded to drive his girlfriend to a local store. While waiting for his girlfriend to return from her store-shopping, he opened the can of beer and consumed the contents.

On his way home from the store, Applicant stopped at another store and purchased a second can of beer. After leaving the store, Applicant consumed his second can of beer and continued to run errands before returning home. (GE 2) While returning home, he was stopped by police for swerving in a lane. Upon observing the open can of beer in Applicant's car, the officer arrested Applicant for DUI. (GE 2).

Whether Applicant consumed only the two beers that he described in his PSI, or more, preceding his domestic violence encounter with his girlfriend is unclear. In a subsequent consultation with a licensed substance abuse counselor in April 2021, the counselor credited him with consuming six beers before his 2016 DUI arrest. (AE H) This attributed consumption level contrasts sharply with his 2019 PSI account to the OPM investigator. Afforded multiple opportunities to do so, Applicant never made any attempt to clarify or reconcile these two competing accounts. *Compare* Applicant's account in GE 2 *with* his substance abuse counselor's finding in AE H.

Considering Applicant's recurrent history of revising or minimizing his accounts when challenged, inferences are warranted that the more expansive drinking version attributable to him by his substance abuse counselor provides the most reliable account and is the accepted version for evidentiary purposes. Appearing in court in September 2016 to answer the DUI charges, Applicant pled guilty to the charges and was sentenced to a year of probation. (GE 1 and AE D) Probation conditions did not include an alcohol counseling requirement or drinking restrictions.

Applicant's PSI appearance

In February 2019, Applicant made a scheduled visit to a Middle Eastern country to meet with an OPM investigator for an interview on his security clearance. (GE 2; Tr. 88-89) Beginning around 3:30 PM on the day before his scheduled February 2019 PSI, he consumed alcohol repeatedly over a seven-hour period (to around 1:00 AM the following morning), and became intoxicated. (GE 2; Tr. 89-90)

Adversely affected from his excessive drinking the previous day, Applicant woke up late in a state of panic and failed to make his scheduled 9:00 AM PSI interview. (GE 2; Tr. 59-60, 93-94) Upon his belated arrival for his interview, the assigned investigator reported his smelling alcohol on Applicant's breath. (GE 2) Applicant admitted he had been drinking and expressed regret and embarrassment to the investigator who previously emailed him about his being late for his PSI. (GE 2; Tr. 95)

Asked in interrogatories propounded to him by Department Counsel in October 2020 whether he intended to continue drinking, Applicant responded that he had made the decision "to stop drinking and to become more healthy [healthier] and change my life due to the opportunities presented to me for my jobs and family." (GE 2, emphasis added) Still feeling considerable stress from his co-parenting relationship with his wife, Applicant continues to drink, albeit not excessively, according to the accounts of

Applicant and his father. (Tr. 47-48, 54-55-59,119) Cited drinking instances included his consuming two beers at a restaurant in December 2020, and more recently his consumption of a beer with his father in 2021. (GE 2 and AE H; Tr. 127-129)

Applicant is credited with receiving alcohol abuse counseling in March 2021 from a licensed substance abuse counselor. (AE H) After taking information from Applicant on his drinking history (dating to age 21), the counselor administered two tests, one a Michigan Alcohol Screening Test (MAST) and the other an Alcohol Use Disorders Identification Test (AUDIT). Both tests were designed to gauge any alcohol problems with Applicant that needed addressing with treatment and medication. (AE H) Based on test results and other information obtained from Applicant, the counselor found no symptoms of alcohol disorder within the previous 12 months assessed. (AE H)

Based on her findings, the substance abuse counselor concluded that there is no clinical documentation to indicate Applicant is a problem drinker, either currently or in the past. (AE H) She made no further recommendation. Because the counselor's historical account of Applicant's drinking did not include his acknowledged drinking preceding his 2016 domestic violence arrest or 2019 PSI, it cannot be accurately determined as to what influence these two incidents might have affected or influenced her overall evaluation of Applicant. At best, only limited weight can be accorded her assessment of Applicant's current alcohol condition.

Applicant's PSI omissions and misstatements

Prior to his February 2019 PSI interview with an OPM investigator, Applicant emailed the investigator on the day of his scheduled interview to explain his failure to timely meet with the investigator for his 9:00 AM interview. In the email, he told the investigator that someone had robbed him, and he had a police report detailing the robbery incident. (GE 2)

Following his questioning by the investigator about the robbery incident, Applicant admitted that his email account was false and was meant to provide cover for his oversleeping following his late night of abusive drinking. (GE 2) After assuring the investigator that he would try to obtain the police report covering the robbery incident, Applicant "did not follow up with any police report." (GE 2)

Through an ensuing email, Applicant advised the OPM investigator that he had been unable to obtain any documentation of the police report. (GE 2) Viewed in their entirety, Applicant's verbal and email responses to the OPM investigator who interviewed him reflect concerted attempts to provide false, inaccurate, or incomplete information to shield from the investigator his alcohol-related reasons for oversleeping and missing his scheduled 9:00 AM PSI interview.

Applicant was confronted again by the PSI investigator who interviewed him in February 2019, this time over his statement to the investigator that he had stopped consuming alcohol and smoking cigarettes shortly before arriving in a foreign country on his employment assignment. (GE 2) After smelling alcohol on Applicant's breath on his

arrival for the interview, the investigator challenged Applicant' account. (GE 2) When confronted, Applicant admitted that he had consumed copious amounts of alcohol the previous evening that contributed to the exhaustion that caused him to oversleep. (GE 2) Like his account of robbery preceding his PSI interview, his account of abandoning alcohol and smoking was false and misleading. His misstatements to the PSI investigator represent multiple material lapses in candor and judgment that Applicant acknowledged only after being confronted by the interviewing PSI investigator.

Endorsements and awards

Applicant is well-regarded by his family, colleagues, and friends. (AEs B and G; Tr. 45-46) They credit him with an exceptional work ethic, trustworthiness, and reliability in the performance of his work responsibilities. (AEs B and G) Applicant documented a merit award in 2019 from his employer, recognizing his outstanding loyalty and exemplary attendance. (AE C)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information.

The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Alcohol Consumption

The Concern: 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 ¶ 21.

Criminal Conduct

The Concern: 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 ¶ 30.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative processes. The following will normally result in an unfavorable national security eligibility determination, security action, or cancellation of further processing for national security eligibility:

. . . .

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other representatives in connection with a personnel security or untrustworthiness determination.

Burdens of Proof

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. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible 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 [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The burden of disproving a disqualifying condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 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

Security concerns are raised over Applicant’s multiple alcohol-related incidents between 2016 and 2019: one that resulted in a DUI arrest and conviction and another that involved drinking to the point of intoxication over a seven-hour period in February 2019 that caused him to be late for his scheduled PSI.

Additional security concerns are raised over his arrest and battery-family violence charge stemming from a pistol-whipping offense directed at his girlfriend at the time. And, security concerns are raised over Applicant's false statements made to the OPM investigator assigned to conduct his PSI in February 2019 about his prior cessation of alcohol consumption prior to his arriving for his PSI, and his falsely attributing a robbery in his room to his failure to timely meet for his scheduled 9:00 AM PSI

Alcohol-related incident concerns

Of major security concern are Applicant's multiple alcohol-related incidents in 2016 and 2019, respectively: the first involving a DUI arrest and conviction and the second involving an extended bout of drinking over a seven-hour period preceding a scheduled PSI interview in February 2019. On the strength of the evidence documented in the record, two disqualifying conditions (DCs) of the alcohol consumption guideline apply: DCs ¶¶ 22(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" and 22(c), "habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol abuse disorder," are applicable to the facts of record in Applicant's case.

Little is known about Applicant's early pre-2016 drinking history, or whether he abused alcohol at any time in his life after he reached the age of majority before his cited 2016 DUI. Because there is so little data in the record to assess Applicant's pre-2016 drinking habits, reliable, evidence-based inferences of the nature and extent of his pre-2016 drinking practices cannot be drawn. What is clearly evident from the record is Applicant's succession of excessive drinking incidents between 2016 and 2019.

For lack of sufficient data and information on Applicant's pre-August 2016 drinking history, assessing recurrence risks becomes much more difficult to assess and evaluate. More information is needed from Applicant to determine whether excessive consumption of alcohol was a transitory problem for Applicant, or represented a series of incidents over a more prolonged period of recurrent alcohol abuse.

Evaluation by Applicant's substance abuse counselor in 2021 produced no assessment that took into account his domestic violence incident, his pre-August 2016 drinking practices, or his abusive drinking preceding his 2019 PSI interview. As a result, very limited weight can be assigned to his substance abuse assessment.

Alcohol abuse disorder, when evidenced by recurrent alcohol-related incidents, has historically been held by the Appeal Board to pose a risk that a person under the influence of alcohol could mishandle or fail to properly safeguard classified information. See ISCR Case No. 95-0731 at 3 (App. Bd. Sept. 1996); ISCR Case No. 94-1081 at 5 (App. Bd. August 1995). In Applicant's case, he has established a sufficient track record of alcohol-related incidents to create continuing security concerns over risks of

recurrence. Considering all of the facts in the record, Applicant's progress to date in addressing the Government's alcohol consumption concerns are not mitigated.

Criminal conduct concerns

Applicant's domestic violence incident in August 2016, involved some very serious physical volitional or reckless acts (pistol-whipping) against his girlfriend at the time that resulted in his being charged with Battery-Family Violence and Cruelty to Children. While the charges were ultimately *nolle prossed* in 2017 after his girlfriend declined to support the charges, the actions were never refuted by Applicant with any probative evidence of his own. Applicant's actions warrant the application of one of the conditions (DCs) of the criminal conduct guideline: ¶ 31(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,"

A considerable period of time has elapsed since Applicant's domestic violence incident in 2016. Since the offense, Applicant has married his girlfriend and avoided any further such incidents. He has exhibited maturity and responsibility in his work and fulfilling his family responsibilities at home. His progress entitles him to the mitigation benefits of one of the MCs under Guideline J. MC ¶ 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 judgment," applies to Applicant's situation.

Prior to the 2016 domestic violence incident at bay, Applicant never before engaged in any physical misbehavior with his girlfriend or other female individual. Since the incident, he has avoided any recurrent physical confrontations with the girlfriend who he married several months following the incident. Applicant has provided sufficient evidence of his learning enough from the incident to avoid any recurrent incidents in the future. Based on a consideration of all of the evidence presented, criminal conduct concerns are mitigated.

Personal conduct concerns

Personal conduct concerns are raised over Applicant's repeated falsification of material facts preceding and during his February 2019 PSI. Misrepresented facts reflecting lapses in candor and judgment include his claims that (a) he was robbed and had a police report in his possession to validate his claimed reasons for being late to his scheduled 9:00 AM PSI and (b) that he had abandoned drinking altogether preceding his scheduled PSI. Neither of Applicant's false accounts were voluntarily corrected before he was confronted and challenged by the interviewing OPM investigator.

Applicable DCs are ¶¶ 16(b), "deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility

determination, or other official government representative,” and 16(d), “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulation, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (3) a pattern of dishonesty or rule violations; and”

Based on the evidence presented, none of the mitigating conditions apply to the facts of Applicant’s case. Providing false information to the OPM investigator scheduled to interview him in February 2019 not only undermined the investigator’s ability to ascertain Applicant’s past and current drinking habits, but revealed serious lapses of candor and judgment by Applicant. Implicit in Applicant’s failure to provide truthful and candid answers to the OPM investigator about being late for his 9:00 AM interview is his failure to cooperate with the investigator during a national investigative process.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his history of abusive drinking and lapses in candor in explaining his reasons for being late to his scheduled February 2019 PSI are incompatible with his holding a security clearance. While Applicant is entitled to credit for his civilian contributions to the defense industry, his contributions are not enough at this time to overcome his alcohol abuse history and lapses in candor in his accounts to the assigned OPM investigator about his drinking history and robbery incident.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude alcohol consumption and personal conduct concerns are not mitigated. Criminal conduct concerns are mitigated primarily due to the passage of time. 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:

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Subparagraphs 1.a-1.c: Against Applicant

GUIDELINE J (CRIMINAL CONDUCT) FOR APPLICANT

Subparagraph 2.a: For Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 3.a-3.b: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge