



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



In the matter of:)
)
) ISCR Case No. 20-01337
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

10/15/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has six arrests for alleged criminal conduct between September 2006 and December 2018, including two assault charges and three alcohol-related arrests. He also has an alcohol-related employment termination, in October 2017. His instances of poor judgment, whether related to alcohol or otherwise, are long-term and recent. He did not provide sufficient evidence to mitigate the resulting security concerns about his alcohol consumption and criminal conduct. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 1, 2019. On October 16, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guidelines G (alcohol consumption) and J (criminal conduct). The SOR was issued under Executive Order 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 December 20, 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 March 3, 2021.

On April 9, 2021, DOHA issued a notice scheduling the hearing for May 28, 2021, a date agreed to by the parties. The hearing took place on the scheduled date, though it occurred by video-conference, rather than in person. The start time of the hearing was also changed. These amendments were mutually agreed to, and appropriate amended hearing notices were issued. (Tr. 9)

The parties submitted and exchanged their proposed exhibits in advance of the hearing. (HE 1; Tr. 7) Department Counsel offered Government's Exhibits (GE) 1-4. GE 1, GE 3 and GE 4 were admitted without objection. (Tr. 18-21) Applicant's objection to admission of GE 2, the unauthenticated summary of his background interview, was sustained. (Tr.19-20)

Applicant testified and offered Applicant's Exhibits (AE) A-F. Department Counsel objected to AE A, the summary of a psychological evaluation of Applicant, on the grounds that it was untimely and was offered without a testifying witness. I overruled the objections and AE A was admitted, as set forth in pre-hearing e-mail correspondence marked as Hearing Exhibit (HE) I. (See *also* Tr. 9-11, 23-24) AE B-F were admitted without objection. (Tr. 22-24)

I held the record open after the hearing to allow Applicant to submit one additional document, which he did, later the same day. Applicant's Exhibit G was received and admitted without objection. (HE V). The record closed on the day of the hearing. (HE V) DOHA received the transcript (Tr.) on June 16, 2021.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a – 1.f, and ¶ 2.b. He partially admitted and partially denied the cross-allegation at SOR ¶ 2.a (concerning the alcohol-related offenses at SOR ¶¶ 1.a, 1.b, and 1.e). In addressing each allegation, he provided the same one-sentence explanation. 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 37 years old. (Tr. 25) He has never married and has no children. (Tr. 35) After high school, he attended college from 2002 to 2008, dropped out to tend bar full time (2009-2010), then went back to school. He earned a bachelor's degree in mechanical engineering in 2013. (GE 1 at 15, Tr. 27-28, 36)

Applicant held various jobs from 2010 to 2012, mostly as a bartender, and then with the university while finishing his degree, in 2013. From 2013 to 2017, he worked for

company H. He was terminated in October 2017. (SOR ¶ 2.b) He was unemployed for the rest of 2017. He then worked on a nine-month contract with defense contractor A for most of 2018. He has worked for his current employer, contractor C, since October 2018. (GE 1 at 15-25; Tr. 27) He is a senior mechanical engineer. (Tr. 26) He has never held a clearance. (GE 1 at 54; Tr. 8) Applicant has a patent for an invention relating to optic transmission for use in well drilling in the oil industry. (Tr. 29-30, AE F)

Applicant started drinking in high school. His drinking increased during his first stint in college (2002-2008) (Tr. 35-36) When he returned to college in 2010, in his mid-20s, he concentrated on his studies, and stopped partying and drinking. He limited his drinking to events like “happy hours” with friends, rather than “all-night house parties.” (Tr. 37-38)

Applicant testified that his drinking increased after college, but was also relatively infrequent. On average, he would consume four drinks per week in social situations with friends, but some weeks he would not drink at all. (Tr. 38-40) He also said he drank heavily in his 20s, up to about 2010. (Tr. 90-92)

In September 2006, when he was in college in his early 20s, Applicant was tailgating at a college football game. He began drinking in the morning, a few hours before the noon kickoff. He was placed into custody, along with others, and charged or cited for public intoxication. (SOR ¶ 1.a) He spent the weekend in jail. He was sentenced to time served. (Tr. 54, 93-95; GE 1 at 46)

In May 2007, also while in college, Applicant was out drinking with a group of friends. Applicant was driving. He executed a U-turn without using a turn signal and was pulled over by police. He was given a sobriety test, and was then arrested and charged with driving while intoxicated (DWI). (SOR ¶ 1.b) He subsequently pleaded guilty to the offense, was convicted, and sentenced to a year of probation. (GE 1 at 47; GE 3) He feels “stupid” about what he did. He testified that he went to counseling and learned not to drink and drive. If he is out drinking now, he will use a car service or a designated driver. He has not had a DWI arrest since. (Tr. 53-58, 96-102)

One night in April 2008, Applicant was with his girlfriend in a parked car in a restaurant parking lot. They were engaged in intimate contact. An investigating police officer noticed their activity, and Applicant was charged or cited with public lewdness. (GE 3) (SOR ¶ 1.c) Applicant denied that he had been seen driving recklessly beforehand. Applicant believes he was targeted because the officer at the scene was the same officer who had arrested him for the May 2007 DWI. (Tr. 58-59, 102-106) Applicant denied that he [or his girlfriend] had been unclothed at any time. He admitted engaging in “lewd behavior” at the time, and acknowledged that doing so in public is inappropriate. (Tr. 60) The local district attorney declined to prosecute the case. (AE E; GE 3)

In April 2011, Applicant was living with a roommate at the roommate’s mother’s house. Late one night, while returning from work at about 3:30 a.m., they got into an altercation on the street outside the house with two visitors. When Applicant and his roommate drove up, they noticed a car parked nearby; its lights were off, but two people were in the car. (Tr. 60, 64-65) After the parties made eye contact with each other, the

other driver sped down the street and parked again. Applicant yelled out of the window and asked what they were doing. A woman then got out of the car, and ran at the Applicant. He put his hand out in a defensive gesture, and she stumbled or fell to the ground. (Tr. 61-66) Her passenger accused Applicant of hitting the woman. The passenger then said something like "I got something to take care of you all," and walked back towards the trunk of his car. (Tr. 60-61, 66; GE 1 at 48-49)

Believing the passenger was going to get a weapon, Applicant then went inside and came out with a shotgun. (Tr. 62, 66) When he returned outside, the other parties were in the midst of a physical altercation, though that ended when they noticed that Applicant was armed. The two visitors then drove away. Applicant and his roommate decided to "remove [themselves] from the situation," so they stayed elsewhere that night. (Tr. 62, 116; AE A at 4)

A week or so earlier, the roommate's motorcycle had been tipped over in the driveway. (Tr. 61). The next day, after this incident, the roommate's motorcycle was tipped over again and the garage of the house was also damaged. Applicant believes the visitors from the previous night had done it. Applicant said the same visitors later came to the house, in what he believed was an effort to extort money from them over the incident. (Tr. 63-69, 117)

The visitors later filed a police report. Applicant was charged with various offenses, including assault causing bodily injury, and felony aggravated assault with a deadly weapon. (GE 3, AE I, Tr. 106-118) (SOR ¶ 1.d) Two years later, in 2013, the charges were dismissed after Applicant's lawyer filed a motion for a speedy trial. (Tr. 70; GE 1 at 48-49; GE 2 at 2; GE 3)

Applicant denied that he had pointed his weapon at anyone, and denied that he had hit anyone with the shotgun. He denied that he had been drinking that night. (Tr. 67) He said the visitors were not charged. He called the matter "the craziest situation I've ever been involved in." (Tr. 69)

In January 2015, Applicant and a friend drove to a nearby large city, about 75 to 90 minutes away, for an evening out on the town. They initially intended to spend the night, though they did not have a hotel reservation. They spent the evening drinking at local bars. The friend changed his mind about staying over, and wanted to drive home. Applicant protested, knowing the consequences of driving while intoxicated or under the influence. He knew, however, that he had no way to get home without his friend, short of an expensive cab ride. Applicant decided to leave with his friend. (Tr. 71-72, 118-122; GE 1 at 42-43)

On the way home, Applicant's friend was pulled over for swerving. The friend failed a roadside sobriety test. They were both taken into custody. Applicant was cited with public intoxication, and he spent the night in a holding cell. (Tr. 72-73, 118-122; GE 1 at 42-43) (SOR ¶ 1.e) He later went to court, received deferred adjudication, and the case was dismissed after 30 days. (Tr. 73-74; GE 2 at 5-6)

In September 2017, while employed by company H, Applicant went to a South American country for a work project. The work was intense, and involved a six or seven-day workweek. Applicant and the other company workers were confined to the hotel or their work site in the field. One evening, they all had drinks with dinner in the hotel restaurant. Applicant was having relationship troubles with his girlfriend and getting “upsetting text messages” from her. He decided to drink in his room to “cure my woes.” (Tr. 45-46) He testified that he had four drinks over dinner and four more drinks in his room. (Tr. 125, 138-139)

All employees were subject to a breathalyzer each morning when they reported to the work camp, and anytime they left the camp premises. The next morning, Applicant registered a 0.14 blood alcohol content (BAC) level. He was retested a short time later and registered a 0.02 BAC. He was sent back to the hotel, and then was flown home to the U.S. and terminated within days. (Tr. 46, 123-127) (SOR ¶ 2.b)

This was the first and only time Applicant consumed alcohol during that assignment. He knew he was in an environment where safety was paramount. He knew employers were subject to a breathalyzer anytime they checked in at the job site but said he did not know the company had a “zero tolerance” policy. (Tr. 47, 123-125, 138; GE 2 at 4)

At his employer’s request Applicant met with a licensed professional counselor (LPC) in October 2017, through his employer’s Employee Assistance Program (EAP). The counselor determined that Applicant did not have an “alcohol problem,” but that he could benefit from an alcohol class. (Tr. 47-48; GE 2 at 4; AE C) Applicant completed 10 hours of substance-abuse education in October-November 2017. (AE G) He testified that he is eligible for rehire. (Tr. 49)

Applicant testified that he learned in alcohol education about how the rate of alcohol intake works (the effect of X number of drinks over Y number of hours, essentially) but also that consuming alcohol to excess affects not just the drinker, but others. He said he no longer drinks during the week. He regrets his decision to drink during the week, and will not do so again. He learned not to self-medicate with alcohol. (Tr. 48-50) Applicant stated he has not been intoxicated at work or under the influence of alcohol at work since he was terminated in October 2017. (Tr. 51)

Applicant disclosed the termination on his SCA. He reported that he “did not realize there would still be alcohol in my system at 7:00 am the next morning. I blew a .04.” (GE 1 at 19)

From 2015 to late 2018, Applicant was in a long-term relationship. He and his girlfriend, J, lived together for most of 2018 but she did not pay rent. (Tr. 75-76) J had a teenage son from a prior marriage, S. (GE 4 at 1) Applicant had a good relationship with S and treated him like his own son, Applicant was involved in S’s upbringing. He attended school functions, and was sometimes the “disciplinarian,” grounding her son or removing privileges. He never engaged in physical discipline. Applicant also never hit his girlfriend. (Tr. 75-77)

Applicant terminated his relationship with his girlfriend in about September 2018. He held the lease to their apartment, and did not want to move out. J moved out in October 2018, but S remained living there with Applicant temporarily while J's employment and living situation stabilized. In November 2018, Applicant notified J that the lease was ending in December 2018 and that she needed to find a place for her son. (Tr. 77-78) J then notified Applicant that she wanted to assume the lease and move back in to the apartment when he moved out. This was never formalized. (Tr. 79-80)

In early December 2018, Applicant came home one day and found all his belongings in the living room. There was a new lock on the door to Applicant's bedroom that Applicant believed J had installed. Applicant dismantled the lock and began moving his belongings back in to the bedroom. (Tr. 79-80)

J came to the apartment later to get some of her things. Applicant let her in and an argument ensued. S was also there, and, according to Applicant, S was yelling at Applicant and "taking his mother's side." Applicant testified that he was "vocal" with S and thought he was being ungrateful. S and J then left. (Tr. 80-81)

The police later came to the apartment. The police report reflects a statement from J in which she reports hearing Applicant yelling at her son, and yelling that he was going to beat the s--- out of him. She reported that S was crying and holding his side as he came down the stairs leaving the apartment, and that S had said Applicant had hit him with the door multiple times as S was leaving the apartment. (GE 4 at 4, 12, 13) Applicant was arrested and charged with domestic assault and battery/abuse. (GE 3 at 8) (SOR ¶ 1.f)

The officer's summary in the police report indicates that when S was examined by paramedics, he was "very tender to the touch on the right side of his ribs." (GE 4 at 4) He was also complaining of pain in the right side of his body. S was transported to the hospital in an ambulance. (GE 4 at 12)

Applicant denied the allegations at the scene. (GE 4 at 5) Applicant denied hitting S in any manner. He denied engaging in any misconduct, though he acknowledged being frustrated and angry at the time. (Tr. 79-89) He believes the allegations are fabricated. Applicant said he had nothing to drink that night. (Tr. 124-136) The case was dismissed in February 2019. (GE 1 at 44-45; GE 2 at 2-3)

In preparation for his hearing, Applicant underwent a psychological evaluation with Dr. E, a Ph.D. in counseling psychology and a major in the Army. (AE B) Dr. E was asked to evaluate: 1) whether Applicant met the criteria for alcohol use disorder; 2) and, if so, what his prognosis was; 3) whether he was at risk for future alcohol-related incidents; 4) if his prior alcohol use could be considered "maladaptive," whether he had established a pattern of reasonable, modified consumption regarded as acceptable by clinical standards; 5) whether Applicant met criteria for any other disorder making future criminal behavior more likely; and 6) whether he had a diagnosis that could pose a risk to his

judgment, trustworthiness, reliability, or ability to protect classified information. (AE A at 1-2)

The basis for Dr. E's opinion was a clinical interview of Applicant, clinical observations, a mental status exam, a personality assessment, an alcohol screening test, and review of documents provided by Applicant and counsel, as well as Applicant's personal, family, social, educational, employment, medical, mental health, substance abuse history, and legal information. (AE A)

Dr. E concluded that Applicant did not present symptoms consistent with an active alcohol use disorder (AUD). Applicant may have had a mild AUD in the past, but if so, given the lack of alcohol incidents in the last four years, he would be considered in full, sustained remission. (AE A at 7) He was found to be at some risk for future alcohol-related incidents, compared to those with no alcohol history. His current alcohol consumption was regarded as clinically acceptable and consistent with public health recommendations. He met no criteria for any mental health condition. (AE A at 7)

Applicant was not regarded as being prone to "rule-violating behaviors." His "indiscretions" of 2006, 2007, and 2008 (public intoxication, DWI, and public lewdness, respectively) were regarded as instances of "interpersonal immaturity and poor decision making." Dr. E questioned the legitimacy of the 2012 aggravated assault charge, noting that it had been dismissed. The 2015 public intoxication charge was not indicative of "true wrongdoing," and "not indicative of criminal behavior," though riding with an intoxicated driver was "foolish." The 2018 domestic battery charge was "disputable and dismissed" and Dr. E found that it does not suggest tendency towards aggression or criminality. (AE A at 7-8)

Dr. E. concluded that Applicant "does not have any mental health or substance abuse conditions, personality problems, or behavioral patterns that could negatively affect his judgment, reliability, or trustworthiness in regards to safeguarding classified information or working in a sensitive position." (AE A at 8)

Applicant described his current drinking as "almost nonexistent." He said he had consumed three drinks since November 2020 (about seven months before his May 2021 hearing). (Tr. 39-40) He acknowledged that the impetus for his altered drinking habits was receiving the SOR. (Tr. 41) He said he had to "retrain" himself to order non-alcoholic drinks, such as lemonade. He does not believe that he had an alcohol problem, and he experienced no withdrawal symptoms. He does not feel a desire to order alcohol. (Tr. 42-43) He has also lost weight and spends his free time being active and working on his house. He intends to continue his current path regarding alcohol use. (Tr. 43-44)

Applicant's current direct supervisor provided a reference letter. The supervisor regards Applicant as highly dedicated and professionally proficient. He has a positive attitude and is committed to getting jobs done well and on time. He manages multiple assignments, and exceeds expectations. He is unselfish and is a hard worker. He is highly reliable and trustworthy. The reference recommends Applicant for a clearance. (AE D)

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 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 six arrests and citations for criminal conduct between September 2006 and December 2018, including two assault charges and three alcohol-related arrests. 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;

(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 has six arrests or citations over a twelve-year period. His most recent arrest involved allegations of assault and battery upon a teenager. Though he denied the offense, the police report suggests that the boy was injured. Applicant also has one firearms charge. Applicant's charges have at times been related to alcohol, but not always. The common link is that Applicant has continued to find himself in problematic situations. This is due, in part, to his own repeated poor judgment.

Applicant is credited with an excellent work record at his current job, and is an accomplished engineer. Weighing against him in this regard is his termination in October 2017 (considered under mitigation and the whole-person concept, even if the termination does not itself relate to criminal conduct).

In weighing mitigation, I have considered Dr. E's report, and his conclusions about the likelihood of future alcohol-related issues and criminal conduct on Applicant's part. While this evidence is given some weight, the fact remains that Applicant's history of troubling conduct is both long-term and recent. His actions continue to cast doubt on his current judgment, trustworthiness, and reliability. More time without any criminal conduct, alcohol-related or otherwise, is needed to establish that his issues of criminal conduct and instances of poor judgment are in his past and unlikely to recur. He has not established that either mitigating condition AG ¶¶ 32(a) or 32(d) should fully apply.

Applicant did not provide sufficient evidence to mitigate the criminal conduct security concerns.

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

Applicant has three arrests for alcohol-related offenses; in September 2006, May 2007, and January 2015. AG ¶ 22(a) applies. In October 2017, Applicant had eight drinks one evening, both at dinner and later in his room, while on a lengthy, intense work assignment in a foreign country. This qualifies as an episode of binge drinking, and AG ¶ 22(c) applies. The company had a strict zero-tolerance alcohol policy due to workplace safety concerns. Applicant was found to have alcohol in his system when he was tested the next morning, and he was sent home and terminated. AG ¶ 22(b) applies.

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; and
- (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.

Applicant's alcohol-related arrests are by now quite dated. However, his alcohol issues are made much more recent because of his alcohol-related termination in October 2017, about three and a half years before his late May 2021 hearing.

Applicant acknowledged his past drinking habits, and the fact that they led to problems with law enforcement. After his termination, he participated in an alcohol education course and counseling through his employer's EAP program. He does not have a current alcohol use disorder. He has significantly curtailed his recent drinking to clinically acceptable levels, as supported by Dr. E's report and by Applicant's testimony.

However, the fact remains that, as with his criminal conduct, Applicant has a long and troubled history of security-significant alcohol involvement, made more recent by his termination. He did not provide sufficient evidence 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. AG ¶ 22(b) is also not fully applicable, as he has not demonstrated a clear and established pattern of modified consumption or abstinence.

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 has a long history of instances of poor judgment, whether alcohol-related or otherwise. They are too numerous and too recent to warrant a finding that they are mitigated. The risk of recurrence is too great at this time for him to overcome. He needs to establish more of a significant, sustained track record of abstinence or sobriety, 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
Subparagraphs 2.a-2.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 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