



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



In the matter of:

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ISCR Case No. 19-02047

Applicant for Security Clearance

**Appearances**

For Government: Gatha L. Manns, Esq., Department Counsel

For Applicant: Jerald Washington, Esq.

01/05/2022

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**Decision**

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HARVEY, Mark, Administrative Judge:

From 2008 to April 2017, Applicant was arrested or apprehended for driving under the influence of alcohol (DUI) or driving while impaired four times. He received one nonjudicial punishment (NJP) and three DUI convictions. He states that he continues to consume alcohol albeit at a responsible level. Guidelines G (alcohol consumption) and J (criminal conduct) security concerns are not mitigated. Guideline E (personal conduct) security concerns are mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 16, 2016, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On January 10, 2020, the Department of Defense (DOD) Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and 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. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines G, J, and E. (HE 2) On March 10, 2020, Applicant responded to the SOR and requested a hearing. (HE 3) On September 22, 2020, Department Counsel was ready to proceed. Processing of the case was delayed because of the COVID-19 pandemic.

On July 12, 2021, the case was assigned to me. On July 23, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for August 30, 2021. (HE 1A) On October 29, 2021, the hearing was rescheduled for December 7, 2021. (HE 1B)

As part of his SOR response, Applicant provided seven exhibits. (Applicant Exhibit (AE) A-AE G) During the hearing, Department Counsel offered three exhibits; Applicant offered eight exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 10-13; GE 1-3; AE H-AE O) On December 15, 2021, DOHA received a transcript of the hearing.

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

### **Findings of Fact**

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.c, and he admitted in part and denied in part the allegation in SOR ¶ 1.d. (HE 3) He also provided extenuating and mitigating information. The three alcohol-related arrests and one apprehension in SOR ¶¶ 1.a through 1.d are duplicated in SOR ¶¶ 2 (criminal conduct) and 3 (personal conduct). His admissions are accepted as findings of fact.

Applicant is a 34-year-old network engineer, who has worked for a defense contractor for the previous six years. (Tr. 14, 16; GE 1) In 2003, he graduated from high school. (Tr. 52) He was married from 2004 to 2009. (Tr. 15, 52) He does not have any children. (GE 1) He served on active duty from 2005 to 2012. (Tr. 24) In November 2012, Applicant was discharged from the Air Force as a senior airman (E-4) with an honorable discharge. (Tr. 15; AE E) He contended that his DD Form 214 incorrectly indicated his rank when discharged was senior airman; however, he was actually a staff sergeant (E-5). (GE 2 at 11) He received multiple certifications in information technology, including in information technology security. (Tr. 23-24; AE J) He received a security clearance in December 2006. (GE 1 at 33) He has worked with sensitive or classified information for 16 years, and he has never been accused of a security violation. (Tr. 24)

### **Alcohol Consumption**

Applicant first consumed alcohol in high school. (Tr. 42-43) He began drinking alcohol to intoxication before 2005. (Tr. 43) He rarely drank to intoxication when he was married from 2004 to 2009. (Tr. 44)

Around May 2008, Applicant was drinking beer while fishing. (Tr. 17) When he returned to his Air Force base, security at the gate stopped Applicant and asked him if he had been drinking. (Tr. 17) He said he was drinking, and he was apprehended for driving while impaired. (Tr. 17; SOR ¶ 1.d; GE 2 at 13) He believed his blood alcohol content (BAC) was below the legal limit, and he was unsure how the authorities concluded he was intoxicated. (Tr. 54; GE 2 at 11) He received a field grade Article 15 or NJP for drunk driving and driving with an expired driver's license. (Tr. 17, 25, 52-55; GE 2 at 6-7) His punishment included a suspended reduction in rank to airman first class, and 25 days of extra duty. (Tr. 52; GE 2 at 7) He did not appeal his NJP. (Tr. 63) He attended alcohol-related training. (Tr. 17; GE 2 at 7) He lost his on-base driving privileges for six months. (Tr. 25; GE 2 at 13) The record does not contain a copy of the police report or record of nonjudicial punishment for his 2008 offense. (Tr. 55-56)

Around September 2011, Applicant was drinking, and he believed he was not intoxicated. (Tr. 18) The police stopped his vehicle for driving 70 miles per hour (MPH) in a 45 MPH zone, and they arrested him for DUI. (Tr. 18, 27-28; SOR ¶ 1.c; AE C at 18-19) His BAC was .08. (Tr. 56-58; AE C at 3, 20) He was convicted of DUI, and a civilian court imposed two years of probation, a \$600 fine, and court costs. (AE C at 5) He successfully completed an alcohol and substance abuse class. (Tr. 18, 28; GE 1 at 30; AE C at 5, 9, 13) His driver's license was suspended "as a matter of law" for an unspecified period. (AE C at 5) After the 2011 DUI arrest, he modified his alcohol consumption by consuming less alcohol. (Tr. 28-29) He did not disclose the DUI arrest and conviction to his chain of command even though he realized at that time that he had an obligation to disclose it. (Tr. 26-27)

Applicant disclosed his 2011 DUI arrest on his August 16, 2016 SCA. (GE 1 at 28-29) His SCA asked whether he had been ordered, advised, or asked to seek alcohol counseling or treatment in the previous seven years, and he answered, no. (Tr. 48-49; GE 1 at 32) Applicant said he answered, no because he believed the alcohol counseling or treatment question was seeking information about one-on-one counseling. (Tr. 49)

Around January and April 2017, Applicant was drinking, and the police stopped his vehicle on two occasions and arrested him for DUI. (Tr. 18-20; SOR ¶¶ 1.c and 1.d) As for the April 2017 arrest, he was cited for DUI and driving with a suspended license. (AE A at 5) The police alleged Applicant failed to yield to the officer's commands, and they pointed their firearms at him. (Tr. 37; GE 2 at 5) Applicant did not remember resisting arrest or having firearms pointed at him. (Tr. 37-38) His first BAC from the April 2017 DUI was .197, and his second BAC was .16. (GE 3 at 3, 5, 14; AE A at 2) Both DUIs were adjudicated in the same proceeding, and resulted in two DUI convictions. (Tr. 59) The driving with suspended license was not proessed. (AE A at 10, 12) He received a combined sentence, which included 12 months of probation, a \$700 fine, court costs, and a suspended jail sentence of 60 days. (AE A at 6; AE B at 4) He attended an alcohol and substance abuse class for 12 hours. (Tr. 19-20, 35) He did not report the two alcohol-related arrests in 2017 to his employer even though he knew he had a duty to report them. (Tr. 46-47)

After Applicant completed about eight hours of therapy, his plan was not to drink more than two drinks at a setting, and not to drink on more than two occasions per month. (Tr. 21, 40, 51) He has never been diagnosed with alcohol use disorder. (Tr. 51) He has different friends from 2017, and his new friends are not focused on alcohol consumption. (Tr. 41) He enjoys exercise and healthy outdoor activities unrelated to alcohol consumption. (Tr. 41)

Applicant denied having alcohol-related blackouts or having withdrawal symptoms. (Tr. 45) Over the past 15 years, he abstained from alcohol consumption for nine or ten month periods and then resumed alcohol consumption. (Tr. 46) He completed alcohol-related counseling on April 11, 2018. (AE H)

Applicant signed a statement of intent not to drive while under the influence of alcohol. (Tr. 22; AE D) He said, "I understand that any future involvement with drinking and driving is grounds for revocation of my national security eligibility." (*Id.*) He promised to responsibly consume alcohol in the future. (*Id.*)

On March 9, 2020, a licensed clinical social worker (LCSW), licensed substance abuse professional (SAP), and certified substance abuse counselor (CSAC), provided an assessment of Applicant's alcohol consumption. (AE G) During the interview, Applicant said his BAC was "well below the legal limit" when Air Force security personnel arrested him for DUI in 2008. (*Id.* at 2) He denied that he was drunk driving for the arrests in 2008 and 2011. (*Id.* at 3) For his January 2017 DUI arrest, he said the police stopped him because his brake lights malfunctioned, and the police officer did not see him stop for a stop sign. (*Id.*) For his April 2017 DUI arrest, the LCSW said "[u]nlike former situations, however, in this instance his BAC was above the legal limit." (*Id.*) However, she did not indicate his BAC, which were .197 and .16. She indicated Applicant "has never engaged in binge drinking or habitual drinking to the point of impaired judgment." (*Id.* at 4) She noted that after the two DUI arrests in 2017, he successfully completed 9 months of random drug and alcohol urine testing, 12 hours of alcohol and drug abuse classes, and 8 hours of one-on-one counseling with a psychologist. (*Id.* at 4) The LCSW diagnosed no alcohol use disorder. (*Id.* at 6) She recommended that he "engage in self imposed sobriety," and that he receive access to classified information. (*Id.*)

## **Character Evidence**

A friend and Applicant's father, a retired Army lieutenant colonel, provided character statements supporting reinstatement of Applicant's access to classified information. (AE I) The general sense of their statements is that Applicant is knowledgeable, intelligent, honest, and dependable. (*Id.*) He volunteers in his community. (AE K) His resume indicates he has had an excellent career in network engineering and information technology. (AE L)

Applicant received the following Air Force (AF) awards: Meritorious Unit Award with Two Oak Leaf Clusters; AF Good Conduct Medal; National Defense Service Medal; Global War on Terrorism Expeditionary Medal; Global War on Terrorism Service Medal; AF Overseas Ribbon Short; AF Expeditionary Service Medal with Gold Border; AF

Longevity Service; USAF NCO PME Graduate Ribbon; Small Arms Expert Marksmanship Ribbon (Rifle); and AF Training Ribbon. (AE E) He successfully completed several AF training courses. (*Id.*)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the 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 Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant’s security eligibility. Direct or objective evidence of nexus is not required.” ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

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 mitigating 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

### Alcohol Consumption

AG ¶ 21 articulates the Government’s concern about alcohol consumption, “[e]xcessive 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.”

Two alcohol consumption disqualifying conditions could raise a security concern and may be disqualifying in this case. AG ¶¶ 22(a) and 22(c) provide:

(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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

AG ¶¶ 22(a) and 22(c) are established. Applicant’s SOR alleges four alcohol-related incidents involving the police or courts or both. In 2008, Applicant’s commander concluded he had engaged in drunk driving and imposed punishment under Article 15, UCMJ. In 2011, 2017, and 2017, he was convicted a total of three times of DUI. In his April 2017 DUI, his BAC was .16. Although the term “binge” drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours or “as a pattern of drinking alcohol that brings blood alcohol concentration (BAC) to 0.08 percent - or 0.08 grams of alcohol per deciliter - or higher.” The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), [https://pubs.niaaa.nih.gov/publications/Newsletter/winter2004/Newsletter\\_Number3.pdf](https://pubs.niaaa.nih.gov/publications/Newsletter/winter2004/Newsletter_Number3.pdf); NIAA website, “Drinking Levels Defined,” <https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/moderate-binge-drinking>. His BAC for the April 2017 DUI is high enough to establish Applicant engaged in binge-alcohol consumption to the extent of impaired judgment.

Four Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a)-23(d) 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 good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

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

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the mitigating conditions fully apply. Applicant's SOR alleges and the record establishes four alcohol-related incidents involving the police or courts or both. Applicant completed alcohol training, rehabilitation, or counseling programs after his 2008, 2011, and 2017 arrests. He provided "a favorable prognosis" by an LCSW; however, the LCSW did not indicate that his commander determined in his NJP that he

committed a drunk driving offense in 2008, and that he had three drunk driving convictions. The LCSW did not indicate he had a .16 BAC for his April 2017 DUI. She indicated Applicant “has never engaged in binge drinking or habitual drinking to the point of impaired judgment.” (AE G at 4) Applicant’s .16 BAC related to his DUI arrest is binge drinking to the point of impaired judgment. His alcohol-related training, counseling, and therapy ended in 2018.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption or responsible alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). There is no bright-line time period in the Directive or Appeal Board jurisprudence to establish rehabilitation. See ISCR Case No. 18-02526 at 3 (App. Bd. Dec. 20, 2019) (reversing grant of security clearance in Guideline G case with two years of sobriety in case involving two DUI convictions); ISCR Case No 18-01926 at 4 (Sept. 20, 2019) (reversing grant of security clearance in Guideline G case with two years of sobriety).

After careful consideration of the Appeal Board’s jurisprudence on alcohol consumption and Applicant’s history of alcohol consumption and rehabilitative efforts, I have continuing doubts about the risks of poor decisions after excessive alcohol consumption. It is too soon to conclude alcohol-related incidents involving the police and courts or compromise of classified information are unlikely to recur. I have lingering doubts about Applicant’s current reliability, trustworthiness, and good judgment. Alcohol consumption concerns are not mitigated.

### **Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case, “(a) a single serious crime or multiple lesser offenses,” and “(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.” AG ¶¶ 31(a) and 31(c) apply to the four alcohol-related driving offenses discussed in the alcohol consumption section, *supra*.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and



does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

None of the mitigating conditions fully apply for the reasons stated in the alcohol consumption section, *supra*. More time must elapse without criminal conduct before criminal conduct security concerns will be mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The LOR alleges three disqualifying conditions in AG ¶ 16 that are relevant in this case. AG ¶¶ 16(c), 16(d)(3), and 16(e)(1) read:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(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 regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . . .

AG ¶¶ 16(c) and 16(d)(3) do not apply. As indicated in the previous sections, Guidelines J and G are the most appropriate guidelines for Applicant's conduct. The previous sections indicate sufficient evidence for an adverse determination. AG ¶ 16(e)(1) applies because his alcohol-related criminal conduct adversely affects his personal, professional and community standing.

AG ¶ 17 lists two conditions, which may mitigate security concerns in this case. The three mitigating conditions are as follows:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶¶ 17(c) and 17(e) apply. Applicant paid his fines and expressed remorse for his conduct. He is not on probation. Security officials, the courts, and law enforcement are aware of his misconduct, and he is not subject to coercion. Personal conduct security concerns are mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 have incorporated my comments under

Guidelines G, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 34-year-old network engineer who has worked for a defense contractor for the previous six years. He served on active duty from 2005 to 2012. In November 2012, Applicant was discharged from the Air Force with an honorable discharge. He received multiple certifications in information technology, including information technology security. He received a security clearance in December 2006. He has worked with sensitive or classified information for almost 16 years, and he has never been accused of a security violation.

A friend and Applicant's father, a retired Army lieutenant colonel, provided character statements supporting reinstatement of Applicant's access to classified information. The general sense of their statements is that Applicant is knowledgeable, intelligent, honest, and dependable. He volunteers in his community. His resume indicates he has had an excellent career in network engineering and information technology. He received several Air Force awards, ribbons, and citations. He successfully completed some AF training courses.

The factors weighing against continuation of his security clearance are more substantial than the mitigating circumstances. Applicant had four alcohol-related incidents resulting in an apprehension, three arrests, imposition of NJP, and three convictions from 2008 to 2017. His BAC for his April 2017 DUI arrest was .16. He is not currently involved in any alcohol counseling or treatment. He said that he continues to consume alcohol albeit at a responsible level. He has had previous periods of abstinence. He did not provide any statements from friends or family discussing his current level of alcohol consumption. He did not timely disclose his DUI arrest in 2011 to the Air Force and his two DUI arrests in 2017 to his employer. His failure to timely disclose security relevant misconduct to his employer or security is only being considered under the whole-person concept and not for disqualification purposes because the failure to disclose misconduct was not alleged in the SOR.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont*, 913 F. 2d at 1401. Unmitigated security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more time without excessive alcohol consumption and criminal conduct, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Personal conduct security concerns are mitigated; however, alcohol consumption and criminal conduct security concerns are not mitigated at this time.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

### **Conclusion**

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

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MARK HARVEY  
Administrative Judge