



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-01963
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William Miller, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline J, criminal conduct, Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 20, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, criminal conduct, Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. On August 25, 2022, the DOD issued Applicant an amended SOR. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On June 14, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. On September 28, 2022, Applicant answered the amended SOR. The case was assigned to me on July 3, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 25, 2023, scheduling the hearing for August 29, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 14. There were no objections, and the exhibits were admitted into evidence. Applicant testified, and he did not offer any exhibits. DOHA received the hearing transcript (Tr.) on September 12, 2023.

### **Procedural Matters**

In accordance with DOD Directive 5220.6 the Government moved to amend the SOR to render it in conformity with the evidence admitted. There was no objection to the motion, and it was granted. SOR ¶ 3.a was amended to read as follows:

3.a You used marijuana with varying frequency from approximately 1990 through June 2022. (Tr. 85-87)

### **Findings of Fact**

Applicant admitted all of the allegations in SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He attended college at various times from 1990 to 2005 but did not earn a degree. He married in 2014 and has a stepchild. He has two adult children from previous relationships. He has worked for his present employer, a federal contractor, since 2018. (Tr. 16-20)

Applicant was arrested in April 1992 and charged with robbery and conspiracy to commit robbery, both felonies. He testified he was in college and he and a group of friends decided to order a pizza and then steal the pizza from the delivery person and not pay. He was with the group when two people stole the pizza and beverages and they all ran away. Applicant ran and did not get caught but later turned himself in. He admitted it was a dumb college stunt. He participated in a pretrial diversion program. He was required to perform community service, pay a fine, and was on probation. He successfully completed the program and in 1996 the charge was dismissed. Applicant did not disclose these felony charges on his January 2019 security clearance application (SCA) as was required. He testified he was aware the charge was a felony and serious. His explanation for failing to disclose it was he marked “no” in error. He did not know why he would mark “no” and said he did not intentionally falsify his SCA. (Tr. 23-31; GE 1, 2, 14)

In December 1993, Applicant was arrested for simple assault-physical menace. He pleaded not guilty and was found not guilty. He could not recall this arrest or any of the facts. (Tr. 30-31; GE 5)

In October 1994, Applicant was arrested for obstructing highways/other public passages. He explained that he grew up in a tough neighborhood and the police were doing a lot of sweeps in the street. He explained that if you were outside, you would get swept up. and go to jail. He was home from college and was with friends and was arrested. A warrant was issued in 2007 for failing to appear for this charge. He testified he was unaware of the notice to appear because he likely went back to school. The charge was dismissed in 2008 but Applicant does not recall the situation. (Tr. 31-34; GE 2, 6)

In July 1996, Applicant was arrested for alcohol in public, bad check, and failure to appear. During his background investigation he told the investigator he had written a check and intended to put money in his account to cover the amount, but he had a serious motorcycle accident and spent three months in the hospital. When he was notified about the bad check, he went and paid it. He said this was a separate incident from the alcohol in public charge. He stated he was probably loitering when the police came, and he likely had a bottle in his hand. He pleaded guilty to the alcohol in public charge. Regarding the failure to appear charge, he said he likely did not show up in court for a previous charge. (Tr. 35-39; GE 2, 7)

In May 2007, Applicant was arrested and charged with possession of a controlled dangerous substance, less than 50 grams of marijuana, 5 grams of hashish. He explained he was arrested the day after his birthday. A friend had given him some marijuana as a present, and he was stopped by the police. He had been consuming alcohol but did not recall how much. He was searched and forgot he had the marijuana in his pocket. When he went to court, he said the judge was angry at the prosecutor because he or she had made an error and did not have the required original documents to prosecute the case. The judge dismissed the charge and told Applicant it was his lucky day, and he should buy a lottery ticket. (Tr. 39-43; GE 8)

In response to questions on his SCA that asked if Applicant had ever been charged with an offense involving alcohol or drugs, Applicant responded "no." He testified that he was not convicted but he was charged so did not disclose it. He said he may have interpreted the question incorrectly. (Tr. 43-44; GE 1)

In June 2007, Applicant was charged with public drinking alcohol prohibited. Applicant testified that this arrest occurred during one of the police sweeps of his neighborhood. He and friends were drinking outside a house that was close to a liquor store. He pleaded guilty to the offense. He believed he was required to pay a fine. (Tr. 44-46; GE 2, 9)

In June 2012, Applicant was charged with driving on a suspended license/registration suspended/revoked. He testified his license was suspended because of unpaid parking tickets. He went to pay the tickets and learned the tickets belonged to his father who had a vehicle registered in Applicant's name and did not pay the tickets. His father had moved. Applicant paid the tickets, and his license was reinstated. (Tr. 46-47; GE 12)

In March 2013, Applicant was charged with driving on a suspected license/registration suspended/revoked. Applicant testified he pleaded not guilty to the charge, and it was dismissed. He stated he did not recall if his license was suspended. When completing his SCA, it asked if Applicant had been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him. He responded "no." He testified that he did not know why he responded "no" and did not disclose the 2013 suspended license ticket. (Tr. 47-48; GE 1, 10)

In December 2014, Applicant was arrested and charged with operating under the influence of liquor or drugs and operation of a motor vehicle while in possession of narcotics. Applicant testified that he was intoxicated and was pulled over by the police for failure to maintain his lane. The police searched him and found a bag of marijuana on him. He was found guilty of driving under the influence of alcohol or drugs (DUI). His driver's license was suspended. He was required to attend a 20-hour alcohol information course. This was the first time he attended an alcohol information course. (Tr. 48-52; GE 11)

In August 2017, Applicant was arrested and charged with DUI and driving while license suspended or revoked. Applicant testified that he was drinking alcohol with friends at a bar. He and his friend left, and Applicant was following his friend in his car to another location. He was stopped by the police. He said he was unaware that his driver's license was suspended when he was stopped. He learned he had not completed the requirements for reinstatement of his suspended license that was issued by another state. He said he took care of the requirements. He spent a couple of days in jail. He was convicted of DUI. He was ordered to take two alcohol courses that required weekly attendance. He testified he did not have a problem with alcohol, but rather he had a problem with driving after he had consumed alcohol. (Tr. 52-56 73-74; GE 2, 14)

In November 2019, Applicant was charged with simple assault-family violence. He was ordered to attend a 24-week anger management course. He and his wife had an argument, and he tossed a purse across the room and the strap hit her leg. She felt threatened, called the police, and then hung up. The police arrived and he was arrested. He admitted he had consumed a couple of beers at the time. His wife contacted the prosecutor saying she regretted her actions. Applicant's case was nolle prosequi under a pretrial diversion program after he completed an anger management course. (Tr. 56-58; GE 2, 4)

In his March 2019 Applicant was interviewed by a government investigator. He confirmed the accuracy of a summary of his interview in September 2020. Applicant told the government investigator that he drinks one beer a day and four on the weekends. He said he does not drink and drive and instead uses an UBER for transportation. He also said that there was a zero-chance alcohol would have a negative impact on his life in the future. At his hearing, he said he obviously did not adhere to that promise. (Tr. 74-75; GE 2)

Applicant was asked by the government investigator about his criminal record and if he was ever charged with a felony, been convicted of domestic violence, or charged with an offense involving a firearm, alcohol, or drugs and he responded “no, only the DUI charges.” Only upon being confronted with the 2007 criminal charge of possession of marijuana did he admit the offense. He did not disclose the felony robbery arrest in 1992; the 1993 simple assault arrest; the 1994 obstructing a public highway; the 1996 possession of marijuana; the 2007 public consumption of alcohol; and the 2013 driving with a suspended/revoked license arrest. These arrests were not disclosed or discussed during his March 2019 interview. (GE 2)

In January 2020, Applicant was interviewed again by a government investigator. He was asked if he had been arrested, charged with, convicted of, or sentenced for a crime, or received a summons, citation, or ticket to appear in court, or has been on probation or parole. He said “yes” and said he had previously discussed all of his criminal activity during his March 2019 interview. That interview included his three DUI arrests, and the 2007 criminal charge of possession of marijuana, but did not include disclosure of the felony robbery arrest in 1992, the 1993 simple assault arrest; the 1994 obstructing a public highway arrest; the 1996 possession of marijuana arrest; the 2007 public consumption of alcohol; and the 2013 driving with a suspended/revoked license arrest. When he was asked by the investigator if he had any additional criminal activity to report, he said “no.” He did not disclose the above arrests. (GE 2)

In December 2021, Applicant was arrested for DUI, possession of an open alcohol container and defective tires. He testified that he was going home, and his tire blew out. He pulled over and put on his emergency flashers. The police stopped to assist and smelled alcohol on his breath. He said he had consumed two to three drinks. He was arrested. He said the alcohol containers found in the trunk of his car were not from that night and were trash. He was found guilty and sentenced in October 2022. He received credit for the time he served in jail, which was about five days and a 90-day jail sentence that was suspended. He was required to go to DUI school and be evaluated. He testified he did not receive a diagnosis from the evaluation. He is also required to take another course on drugs. He said he is currently registering for the course. He received a fine of \$2,600 that he pays in installments. He is required to complete 120 hours of community service. He has completed about 28 hours. He was required to wear an ankle bracelet for three months in 2022 that detects alcohol consumption. He is no longer required to wear the bracelet. When he completes the drug course, he can have his license reinstated on a restricted basis to drive to and from work. He is required to have an interlock installed on his car. He is on probation until October 2024. He is to abstain from alcohol while on probation. He meets with his probation officer monthly. He is required to abide by the terms of his probation. He testified that he has not consumed alcohol while on probation. (Tr. 59-72; GE 3, 13)

Applicant disclosed in his SCA that he used marijuana from 1990 to 2016 and wrote, “recreational occasional 5.” He testified that he does not know what he meant by “recreational occasional 5.” During his background interview he told the investigator that he used marijuana three times a month. At his hearing, he said he did not know how

accurate that statement was. He admitted that he has used marijuana since completing his January 2019 SCA. He was asked when his last use was, and he said he consumed an edible marijuana in 2021 and another time in 2022. He also acknowledged he was on probation when he consumed the edible marijuana in 2022. He consumed it while at a family reunion. He said he no longer smokes marijuana. It is unknown if his use of marijuana is a violation of the terms of his probation. (Tr. 75-82; GE 1, 2)

Applicant told the government investigator that he continued to associate with people who use illegal drugs. At his hearing, he testified that he now tries not to associate with people who use drugs. (Tr. 80-82; GE 2)

Applicant was asked at his hearing why he failed to disclose his felony arrest, domestic violence arrest, alcohol arrests and drug arrests. He denied he intentionally falsified his SCA. He said he did not remember a lot of his past. He said he did not have any idea why he did not disclose them on his SCA or when he was questioned by a government investigator. He said at the time he did not recall certain offenses. He said he was not trying to hide anything from the government. (Tr. 82-84)

Applicant testified that he has regrets his past, and he wants to move on. He is remorseful for his past conduct. He has had personal issues that he has taken care of. He stated that if it is determined that he needs additional treatment he will follow through. He believes the anger management class he completed has helped his marriage. (Tr. 21, 84-85)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence

contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline J: Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following 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;

(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; and

(c) individual is currently on parole or probation.

Applicant was arrested in 1992 and charged with robbery and conspiracy to commit robbery, both felonies. In 1993, he was charged with simple assault. In 1994, he was charged with obstructing highway/other public passages. In 1996, he was charged with alcohol in public. In 2007, he was charged with possession of marijuana and public consumption of alcohol. In 2012 and 2013, he was charged with driving after license suspended/revoked. In 2014 and 2017, he was charged with DUI. In 2019, he was charged with simple assault. In 2021, he was charged with DUI. He has been convicted three times of DUI. He is on probation until October 2024 for his most recent DUI. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

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

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

Applicant has a long history of violating the law. Some of his earlier offenses, including the felony charges, could be attributed to being young, immature, and the environment he grew up in. He was given a chance through the pretrial diversion of the felony offenses to move forward in the right direction. Applicant continued to be arrested for driving on a suspended or revoked license, public drinking, possession of marijuana, simple assault, and three times for DUI. I have considered that some of the charges were dismissed or not prosecuted. Applicant is on probation for his most recent DUI conviction until 2024. Based on his extensive criminal conduct, I am unable to conclude future misconduct is unlikely to recur. Applicant's criminal conduct casts doubt on his reliability, trustworthiness, and good judgment. Applicant's criminal conduct spans more than 30 years. There is insufficient evidence of successful rehabilitation. The above mitigating conditions do not apply.

### **Guideline G: Alcohol Consumption**

AG ¶ 21 expresses the security concern for alcohol consumption:



Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. I find the following to be potentially applicable:

(a) alcohol-related incidents away from work, such as driving 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

(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's alcohol-related criminal conduct was cross-alleged under Guideline G. In 1996, Applicant was arrested for alcohol use in public. In 2007, he was charged with public consumption of alcohol. He has been convicted three times for DUI, the latest in 2021. The evidence supports the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

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

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has repeatedly been involved in alcohol-related incidents from 1996 to 2021. He has repeatedly been required to take alcohol awareness classes. He told the government investigator in 2019 that there was a zero chance he would be involved in another alcohol-related incident. He is currently abstaining from alcohol consumption as part of his probation from his 2021 DUI conviction. Applicant has not participated in treatment. He indicated his problem is that he drives after drinking, not his drinking. Applicant is still completing the terms of his probation regarding his last DUI. Insufficient time has passed to believe future alcohol-related conduct is unlikely to recur. There is insufficient evidence that he has acknowledged his problem with alcohol, and has taken action to overcome it. He is not participating in alcohol counseling or treatment. None of the mitigating conditions apply.

### **Guideline H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant's criminal drug possession arrests were cross-alleged under Guideline H. Applicant used marijuana with varying frequency from about June 1990 to June 2022. He was charged in May 2007 with possession of marijuana, 5 grams of hashish. The charges were dropped due to an administrative problem by the prosecution. In 2014, he was stopped by police and was charged with DUI. When his vehicle was searched a bag of marijuana was confiscated. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant continued to use marijuana after he applied for a security clearance. He has used edible marijuana while on probation. Applicant is attempting to stop associating with friends who use drugs. He continues to associate with friends who use drugs but is attempting to stop. The recency and frequency of his drug use, and his failure to cease using drugs even after applying for a security clearance raise concerns. I cannot find that future illegal drug use is unlikely to recur. He has not established a pattern of abstinence or signed a statement to abstain from future drug involvement. The above mitigating conditions do not apply.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Applicant disclosed his 2014 and 2017 DUI convictions on his SCA but failed to disclose any of his other criminal arrests, charges, or convictions as required. When he was interviewed by a government investigator in 2019 and 2020, he again failed to disclose his past criminal arrests, charges, or convictions. Although he may not have been able to recall some of the older minor offenses, he had no explanation for why he did not disclose anything except his DUI offenses on his SCA. Applicant may have forgotten some of his minor criminal arrests, but I do not believe he did not recall any of his criminal arrests or charges, especially regarding the questions that specifically ask if he had been arrested and charged with a felony or any arrests related to alcohol and drugs. He was given an opportunity during his interview with a government investigator to provide this information and again did not. I find he deliberately failed to disclose his criminal arrests on his SCA and when interviewed by the government investigator in 2019 and in 2020. AG ¶¶ 16(a) and 16(b) apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Applicant's deliberate failure to disclose any of his criminal conduct except his DUIs is not minor. He was offered an opportunity by the government investigator during his background interview to provide information about these matters and failed to do so. The security clearance process relies on those seeking a clearance to be honest and forthcoming. Applicant was not, which casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

### **Whole-Person Concept**

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

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

Under AG ¶ 2(c), 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 J, G, H and E in my whole-person analysis.

Applicant has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the security concerns arising under Guideline J, criminal conduct, Guideline G, alcohol consumption, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct.

### **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
Subparagraph 1.a-1.i:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a-4.f:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge