DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 21-01950
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Todd A. Hull, Esq.
06/29/2023

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Decision

____

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct) and G (Alcohol Consumption). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 16, 2018. On April 5, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J and G. The DoD acted under Executive Order (Exec. Or.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

The Government amended the SOR on April 19, 2022. Applicant answered the original SOR on May 12, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 30, 2022, and the case was assigned to me on March 8, 2023. On March 29, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 10, 2023. The

Government amended the SOR prior to the hearing on May 10, 2023. I convened the hearing as scheduled. Applicant's counsel was afforded the opportunity to object to the amendments or make a procedural motion. There was no objection or motion. (Tr. at 14.) The Government's disclosure letter to Applicant dated July 5, 2022, the Government's Exhibit List, and a post-hearing email exchange are marked as hearing exhibits (HE) I through III. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified called three witnesses, and offered Applicant Exhibits (AE) A through P, which were admitted in evidence without objection. DOHA received the transcript (Tr.) electronically on May 17, 2023.

I kept the record open after the hearing to enable the parties to submit additional documentary evidence. (Tr. at 216; HE III.) The Government timely submitted GE 11 (2006 Incident Report), GE 12 (2013 Incident Report), and GE 13 (2018 Incident Report), which were admitted with supplemental comments from both parties. (HE III.)

Findings of Fact

Applicant's admissions in his Answer are incorporated in my findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is a twice divorced 44-year-old employee of defense contractor. He has an adult-aged son from his first marriage. He married again in 2013 and separated from his second spouse in May 2017. The divorce was final in 2019. There are two minor-aged children from his second marriage. There were also two stepchildren from the second marriage. (Tr. at 121-122; GE 1 at 36-38) He was granted a security clearance in 2008, again in 2011, and again in July 2015. (GE 2 at 52; Tr. at 123.)

SOR ¶ 1.a: August 2021, charged with driving while license suspended. In his Answer, Applicant denied the charge, as to the date listed, but admitted the underlying conduct. He stated that mitigating circumstances applied. He noted the underlying incident, alleged in SOR ¶ 1.c, occurred over five years ago. He acknowledged that his driving privileges had been suspended in another state, after he pled guilty to driving under the influence of alcohol (DUI). He said that he had failed to satisfy all the requirements of his sentence, which included documenting that he had completed a court-ordered program and paid the required processing fee. (Tr. at 169.) His suspension was flagged by his home state's department of motor vehicles (DMV), which resulted in suspension of his home state driver's license. He took the steps necessary to reinstate his driving privileges in the state where he had received the DUI. (Tr at 77.) He then was able to go to his DMV and get his license reinstated. (Tr. at 169.) He stated he was never informed about the license suspension in his home state because the notice had been returned to the DMV as undeliverable by the U.S. Postal Service. (Tr. at 77-78.) The charge was dismissed without prejudice on December 3, 2021, after he provided the necessary paperwork (Tr. at 78; AE G.)

SOR ¶ 1.b: January 2018, charged with Breaking and Entering; Assault and Battery; and Abduction, and convicted of Assault and Battery and sentenced to one year of imprisonment (with ten months suspended) and probation. In his Answer Applicant admits being charged but disputes the accuracy of the charges while acknowledging full responsibility for his inappropriate actions, which resulted in him being indicted by a grand jury for a Class 5 Felony (Abduction) and a Class 1 Misdemeanor (Domestic Assault and Battery). (GE 7 at 6-7.) He pled guilty to the Class One Misdemeanor, Domestic Assault and Battery, and was sentenced to 12 months confinement, with 10 months suspended. (GE 7 at 8-9.) He was allowed to serve the unsuspended portion of his confinement on the weekends. (Tr. at 164.) He asks that mitigating circumstances be considered. (Answer at 4.)

After almost three years of separation from his spouse he entered her home in hopes of catching her with another man whom he believed to be a drug dealer. In a statement to a deputy sheriff, he acknowledged that he knew he was not welcome in the home and that it was a poor choice to try to go upstairs to find the man. (Tr. at 154-156; GE 4 at 15-16; GE 13 at 4, 5.) His spouse tried to stop him. (Tr. at 154) He stated he never laid his hands on her. "She grabbed on to my belt and went for the ride. And …I had so much adrenaline going through me, I carried myself and her, with her dragging up (sic) the stairs with her holding on to my belt or my clothing or whatever it was, and – all the way into the bedroom where she let go after we entered the door." (Tr. at 160.) His spouse and stepdaughter described him as dragging her upstairs by her wrists. (GE-13 at 4.) After verbally confronting the man, he left his spouse's home. Applicant attributed bruising on his spouse's wrists to their rough sex that they had engaged in earlier in the day and to her anemia that caused her to bruise easily. (Tr. at 158.)

He was arrested and held in jail for six days. (Tr. at 161.) He testified that he had never laid a hand on his wife and had never raised his hand to a woman. (Tr. at 160.) He explained that he only pled guilty to avoid possibly being sentenced to 20 years in prison and to have a chance to gain custody of his children, which he did. (Tr. at 168.) He stated: "So yes, I did plead guilty to it. But did I do it? No, I did not. That's that fine gray area in life that, you know…." (Tr. at 168.)[1]

SOR ¶¶ 1.c and 2.a: February 2017, charged with DUI; DUI with Blood Alcohol Content over .15; Evading; and Hit and Run Property Damage. Convicted and sentenced to one day of imprisonment; three years of probation; forty hours of

[1] I note: "The doctrine of collateral estoppel generally applies in DOHA hearings and precludes applicants from contending that they did not engage in criminal acts for which they were convicted. ISCR Case No. 95-0817 at 2-3 (App. Bd. Feb. 21, 1997). There are exceptions to this general rule, **especially with respect to misdemeanor convictions based on guilty pleas**. Relying on federal case law, the Appeal Board has adopted a three-part test to determine the appropriateness of applying collateral estoppel to misdemeanor convictions. First, the applicant must have been afforded a full and fair opportunity to litigate the issue in the criminal trial. Second, the issues presented for collateral estoppel must be the same as those resolved against the applicant in the criminal trial. Third, the application of collateral estoppel must not result in "unfairness," such as where the circumstances indicate lack of incentive to litigate the issues in the original trial. ISCR Case No. 04-05712, (App. Bd. Oct. 31, 2006)." This allegation falls into the exception. I have applied the exception with respect to misdemeanor convictions based on guilty pleas.

community service; required to attend a three-month first offender class; and license suspended for one year. In his Answer Applicant admits that he was charged with these four misdemeanors and takes full responsibility for his actions, which occurred on the night his oldest son informed him that his wife was having an affair. (Answer; Tr. at 91; GE 1 at 43-45.) He notes that he reported the incident promptly to his security manager and the accident resulted in no injuries and very little property damage to a barrier.

At the hearing he explained that he decided to drink hard liquor instead of beer and when the bar did not have his preferred brand of rum, he was served rum with a higher alcohol content. He said, "I did not know that" the rum had a higher alcohol content. He stated that he ended up "getting inebriated" and drove into a vehicle barrier. He was stopped and arrested by a sheriff's deputy. (Tr. at 91-92.) He pled guilty to DUI. His license was suspended for one year. He had to pay fines, court costs, attend a substance abuse program, and do 40 hours of community service, which he said that he completed. (Tr. at 92.)

During his security clearance interview he told the investigator that he had been drinking with a friend he had made. He stated that his friend had invited him to his residence for a social gathering and that he had consumed a mixed drink. He did not recall any additional information about the night due to blacking out. He stated that he became aware of his surroundings when he woke up in jail. (GE 4 at 8.)

He said that he does not "drink any kind of liquor whatsoever" and if he does have any kind of alcohol, "it is a couple beers, and that is it." He added that he drinks by himself in the privacy of his "own home" except for at company events where he drinks to be social. (Tr. at 93.) He vowed that he would not drink and drive again. (Tr. at 94.)

SOR ¶ 1.d: April 2013, charged with Possession of Marijuana, Possession of Drug Paraphernalia, and Speeding. In his Answer Applicant admits being charged but denies committing the offenses. He said that he pled guilty to an improper equipment violation. (GE 2 at 43.)

Applicant was pulled over for speeding. When the state trooper asked to search his vehicle, he consented. (Tr. at 94.) He acknowledged that he had told the security clearance investigator in his 2017 interview that the state trooper said he smelled marijuana in the car and requested to search the vehicle. (GE-2 at 42-43; Tr. at 144.) Applicant said that he did not smell marijuana because he had suffered multiple broken noses and was a heavy smoker. He described the trooper's discovery "as like the smallest little thing in a little bag, is what the police officer pulled out." (Tr. at 95.) The trooper reported detecting a strong odor of marijuana after pulling Applicant over for speeding and that Applicant told him that the marijuana was in the center console of the vehicle. The trooper retrieved a glass bowl containing marijuana with a cork and a glass pipe. (GE 12 at 1.) Applicant said that after he returned from the work assignment, another employee admitted that the marijuana and drug paraphernalia belonged to him. (Tr. at 95.) At the hearing, Applicant denied possessing marijuana since 1999. (Tr. at 110.)

Ultimately the charges were voluntarily dismissed, and he was cited for a nonmoving violation, improper equipment. (AE N; Tr. at 96.)

SOR ¶¶ 1.e and 2.a: April 2006, charged with DUI; failure to stop at the scene of an accident, and refusal of breathalyzer. Convicted of the lesser offense of reckless driving; required to pay a fine; and a six-month driver's license suspension. In his Answer Applicant admits the allegation and takes full responsibility for this incident. In mitigation, he cites that the incident is over 16 years old and occurred during a fifth-year anniversary celebration with his first wife where he and his wife were harassed by a group of 10 individuals. The group assaulted him, and he and his wife fled the area in his car. They were chased by this same group and after the group departed, he was picked up for driving under the influence.

At the hearing, he testified that his first spouse had been driving and wrecked the vehicle. He said that he had been prepared to fight the charges, but his lawyer suggested that he just take the plea deal. (Tr. at 99.) He pled guilty to protect his wife from having to go through the legal process. (Tr. at 99.) When asked by his counsel, "Were you drinking and driving on April 2006?" he stated "No, I was not." (Tr. at 111.)

Applicant's wife told the police that Applicant was driving the vehicle because she was not good with a manual transmission and that he had been attempting to get away from a group that was trying to fight him. She described Applicant as losing control of the vehicle at an intersection and striking a tree. Applicant told the responding police officer, that he had been trying to get away from a group of males to protect his wife and himself and had lost control of the vehicle while attempting to evade the group of men. (GE 11 at 4.) He explained to a police officer that he left the scene of the accident to call the police and that he had only consumed two twelve-ounce beers. (GE 11 at 4-5.) The police officer noted the strong smell of alcohol from Applicant, that the vehicle's airbags had deployed, that the driver's side airbag had blood on it, and that Applicant "was bleeding from his head." (GE 11 at 4.)[2]

SOR ¶¶ 1.f and 2.a: March 1999, charged and convicted of DUI (under 21) and possession of marijuana, and required to pay a fine, attend counseling; and had his license suspended for approximately 6 months. In his Answer Applicant admits the allegation, takes full responsibility for this incident and cites the length of time

[2] I note: "The doctrine of collateral estoppel generally applies in DOHA hearings and precludes applicants from contending that they did not engage in criminal acts for which they were convicted. ISCR Case No. 95-0817 at 2-3 (App. Bd. Feb. 21, 1997). There are exceptions to this general rule, **especially with respect to misdemeanor convictions based on guilty pleas**. Relying on federal case law, the Appeal Board has adopted a three-part test to determine the appropriateness of applying collateral estoppel to misdemeanor convictions. First, the applicant must have been afforded a full and fair opportunity to litigate the issue in the criminal trial. Second, the issues presented for collateral estoppel must be the same as those resolved against the applicant in the criminal trial. Third, the application of collateral estoppel must not result in "unfairness," such as where the circumstances indicate lack of incentive to litigate the issues in the original trial. ISCR Case No. 04-05712, (App. Bd. Oct. 31, 2006)." I have applied the exception with respect to misdemeanor convictions based on guilty pleas.

since this incident as well as the mitigation steps he has taken since the incident in January 2018. (Answer at 9.)

At the hearing he explained "I was hanging out with the wrong crowd, and I -- I had, I think it was like a beer. Not even a beer. I don't remember because it was a big bottle but I didn't drink it all. So it was just, I had a couple drinks off of it. But we drove afterwards." He could not remember why he was pulled over but blamed the police for pulling him over on the basis of "…being suspicious because it was like 1 in the morning or something like that. In [... County], back then that was suspicious if you were driving at 1:00 in the morning in a small county." (Tr. at 102.) He pled guilty and lost his license for a year. He stated that he was required to go to counselling and submit to "drug tests and all that stuff…. I think I ended up having to do two days in jail or three days in jail because I failed a drug test. Again, young, dumb, and full of it." (Tr. at 102-103.)

SOR ¶¶ 1.g and 1.h: In June 1998, charged with simple possession of marijuana (Federal juvenile), convicted and sentenced to probation. As a result of failing several mandatory drug urinalyses during probation, sentenced to approximately three days of imprisonment. In approximately May 1997, you were charged with Possession of Paraphernalia and convicted. (Tr. at 13) After the Government's amendment, Applicant admitted the incidents and discussed the two events together. At the hearing he stated, "I got caught with a marijuana roach, probably a 32nd-of-a-gram of weed," which was the paraphernalia charge. He described the other incident as "…the MPs sneak attacked us in the middle of the night. And I was the only military person there, military dependent there out of 12 people. And so I was arrested for possession of marijuana. And there was -- they found all kinds of marijuana in the woods, but -- so I was -- I got -- everybody there, when we went to court, pointed the finger at [Applicant]. I was the only one with pot. How funny that works. So I took that charge, and I did that." He acknowledged failing a mandatory drug test required as part of his sentence and having to serve time in jail. (Tr. at 105, 106.)

SOR ¶ 1.i: In approximately March 1996, charged with Possession of Marijuana with Intent to Distribute, convicted and sentenced to probation, which included a substance abuse program. During probation, sentenced to approximately two days of imprisonment as a result of failing a mandatory urinalysis. (Tr. at 13.) In his Answer Applicant admits the conduct and takes full responsibility for his actions. (GE 1 at 30.) At the hearing he admitted to being arrested for possessing a quarter pound of marijuana. He was charged with intent to distribute. He acknowledged his arrest in his 2008 SCA and in his 2008 subject interview. He admitted providing marijuana to friends but denied dealing drugs. (Tr. at 126.) He described his response to his sentence as "I did everything but complete it successfully. I believe that I had to do two days in jail because I failed a drug test." (Tr. at 110.)

SOR ¶ 1.j: In February 1994, charged with and convicted of Possession of Marijuana and sentenced to probation. (Tr. at 13.) In his Answer Applicant admits to the possession and takes full responsibility for his juvenile conduct. (GE 1 at 31.) At the hearing he confirmed his security clearance interview that he was arrested for having

about a gram of marijuana in his possession. (Tr. at 124.) He blamed his actions on trying to make new friends because he was new to the area. (Tr. 125.) He cited the decision-making of a young person, who did not realize what he was doing, for his actions. (Tr. at 108.) He admitted he "went to all these classes and all that stuff. And obviously, it didn't work for me because I was again young and dumb" referencing SOR ¶ 1.i. (Tr. at 109.)

I found Applicant's responses and demeanor at the hearing inconsistent with someone who was reliably telling the truth. Inconsistencies between his testimony, prior pleas of guilty, statements to the police and background investigators. and other evidence in the record including witness accounts further undermined his credibility.

Applicant offered the testimony of two work colleagues, as well as his father, a retired senior enlisted member of the U.S. Air Force. The witnesses were very credible. They detailed their familiarity with Applicant and events in Applicant's life that had set him back. The witnesses understood the nature, extent, and seriousness of the conduct and circumstances surrounding the conduct of Applicant. They expressed their confidence in Applicant's ability to maintain a security clearance. (Tr. at 26-29; 36-41; 48-57.)

Policies

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865

§ 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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.

The following disqualifying conditions under AG ¶ 31are 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

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Based on Applicant's admissions and the evidence in the record, the above disqualifying conditions apply.

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.

AG ¶ 32(a) and (d) do not apply. Applicant has six drug-related offenses spanning 19 years, 1994, 1996, 1997, 1998, 1999, and 2013. Over the past 18 years he has had three DUI arrests, 1999, 2006, and 2017, with the most recent DUI in 2017 being unresolved by him, resulting in him being charged in 2021 for driving on a suspended license. Since 1994, Applicant has not gone more than seven years without a recurrence of criminal activity, with the most recent conviction in 2018. Applicant was released from probation less than two years ago for the domestic assault conviction. Applicant's criminal history raises concerns about his judgment, reliability, and trustworthiness because of his actions and failure to either comply with or properly document his compliance with a court order. Applicant acknowledges his arrests and convictions but denies or minimizes the underlying conduct despite pleading guilty. His testimony lacked credibility given the inconsistencies between his testimony and his prior statements; those of others; in addition to his guilty pleas. His conduct reveals an individual who repeatedly showed an unwillingness to comply with the law, rules, and regulations; who exercised poor judgment; and who has failed to accept responsibility for his actions. Applicant's conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. He has not expressed remorse. It is difficult to find that he is successfully rehabilitated when he refuses to accept responsibility for his actions. The criminal conduct security concerns are not fully mitigated.

Guideline G, Alcohol Consumption

The security concern for alcohol consumption is set out 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 are potentially 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 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 was arrested for DUI in March 1999, April 2006, and February 2017. AG ¶¶ 22(a) and 22(c) are applicable.

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

> (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
>
> (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and
>
> (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has multiple DUI arrests and convictions. Although his last DUI arrest was in 2017, he has not acknowledged his improper alcohol use. He minimized his 1999 conviction saying he only had a beer, which he did not finish and was only pulled over because of the early morning hour. He denies his 2006 incident despite his admissions to the police officer, physical evidence, and his guilty plea. He minimizes his 2017 DUI blaming his actions on unknowingly drinking liquor with a higher alcohol content such that he did not recall any additional information about the night due to blacking out and waking up in jail. Applicant consistently downplayed or even denied his drinking and driving incidents and laid out a variety of situations he would continue to drink while denying he would drive after drinking. I have limited confidence in his testimony that he has modified his alcohol use and that his security concerning conduct is unlikely to recur. Applicant

failed to carry his burden to establish the mitigating conditions sufficient to overcome concerns about his alcohol use, reliability, trustworthiness, and judgment.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an 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. An 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. His supervisor, security manager, and father each testified credibly, in particular, concerning Applicant's rehabilitation, changes he has made in his life, and the likelihood of reoccurrence. I have incorporated my comments under Guidelines J and G in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the criminal conduct and alcohol consumption security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline J:	AGAINST APPLICANT
Subparagraph 1.a-1.j	Against Applicant
Paragraph 2: Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge