DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 22-01005
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Brian Farrell, Esquire, Department Counsel
For Applicant: *Pro se*

09/21/2023

_____

Decision

_____

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline G, alcohol consumption, Guideline E, personal conduct and Guideline J, criminal conduct security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On July 14, 2022, the Department of Defense DOD issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G, alcohol consumption, Guideline E, personal conduct, and Guideline J, criminal conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 17, 2022, and requested a hearing before an administrative judge. 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 20, 2023. The case was scheduled for August 16, 2023. Applicant requested a continuance, which was granted. I convened the hearing as rescheduled on August 30, 2023. The Government offered exhibits (GE) 1 through 12. Applicant and two witnesses testified. He offered Applicant Exhibits (AE) A through J. There were no objections to any of the exhibits offered and all were admitted in evidence. DOHA received the hearing transcript on September 12, 2023.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.e and denied 2.a through 2.e and 3.a. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He earned a bachelor's degree in 2004. He never married. He has a seven-year-old daughter from a relationship. He has worked for his current employer, a federal contractor, since 2015. (Tr. 22-25)

In May 2000, Applicant was arrested for driving under the influence of alcohol (DUI). It occurred in a state where Applicant did not live. In September 2007, he completed a security clearance (SCA) application. Question 23 asked about Applicant's police record. It specifically asked if he had ever been charged or convicted of any offenses related to alcohol or drugs. He responded "no." In response to the "other offense" category it requested to provide a "date of offense." He wrote "5/2000." Under the question on the form, he was asked to check if the offense involved a felony, firearms or explosives, pending criminal, alcohol or drugs, court martial or other disciplinary proceeding, and any offense not listed in the above categories. Applicant checked the last box as an offense not listed in the above categories. He did not check the alcohol or drugs category box. He provided information about the offense and stated:

> In the year 2000, when I was 21 years of age I was in a situation where I received a wreckless [sic] driving charge. That matter was closed out in 2005 and I have not received anything more then a speeding ticket before or after the situation. (GE 2)

Under the section "action taken" he wrote:

> I went to court and paid a fine for the wreckless (sic) driving[.] I didn't lose my license or anything, and have not done anything larger or smaller then a speeding ticket before or after that. That as my only run with the [l]aw since I was born. (GE 2)

He also stated:

> The reason why this matter was closed out in 2005 was because I was under the impression that the matter was handled and later I found out that it was not totally settled, so as soon [as] I could I called the courts to [find] out what I needed to do to settle this matter. Got on a[n] airplane the next week and flew to [X] and took care of the matter in one day. And that was the end of the situation. (GE 2)

Applicant testified that the reason he checked "no" regarding an offense related to alcohol, and the reason he failed to disclose his arrest and charge for DUI was because he did not understand the question. He said he believed the charge was reduced to "wet and reckless" and he paid a fine. In the state where Applicant was arrested the term "wet reckless" refers to a DUI charge that was reduced based on a plea agreement and the offense involved alcohol.[1] Applicant stated that he was confused how to report his DUI offense. He did not think he had to report it because he was not convicted. He said even though he marked "no" on his 2007 SCA regarding an alcohol offense that he wrote a letter to the federal government before he submitted his clearance application, and he made the government aware of his charge. He did not provide a copy of the letter or other corroborating evidence. He said that part of the contents of the letter are included in his comments that are noted above and were included in the SCA. He testified that he was not trying to mislead the government. Although the charge of DUI may have been reduced, the "wet and reckless" charge involved alcohol, which the SCA specifically asked, and he did not disclose. (Tr. 22-35, 53-64)

In 2013, Applicant was arrested and charged with DUI. He did not report his arrest to his facility security officer (FSO) or employer. He said he was unaware that he was required to report the arrest because he held a clearance and thought he only had to report a conviction. When arrested he refused to take a breathalyzer because his attorney had previously advised him not to because the machine is inaccurate. This case was eventually nolle prosed. He was unsure why the charge was not prosecuted. He admitted he had consumed alcohol before the arrest. He failed the field sobriety test, and he told the police officer that he had consumed two beers and two shots of alcohol forty-five minutes before his arrest. During his May 2019 background interview, he denied he consumed any alcohol. At his hearing, he said he likely had more than one drink hours before his arrest. (Tr. 35-38, 49, 74-80; GE 3, 9; AE B, C)

In 2017, Applicant completed another SCA. Section 22 asked if in the last seven years he had been arrested by a police officer, sheriff, marshal of any other law enforcement official. He responded "no." It also asked if he had **EVER** been charged with an offense involving alcohol or drugs. He responded "no." He did not disclose his May 2000 DUI arrest or later reduced "wet and reckless" charge or his September 2013 DUI arrest and charge. He again testified that these were not reported as required because they had been dismissed and there was nothing to report, and he thought they went away. (Tr. 35-38, 64-67; GE 1)

[1] California Vehicle Code 23103.5

In November 2018, Applicant was interviewed by a government investigator. Applicant disputed the investigative summary and stated when asked if he had been charged with an offense involving alcohol, he admitted the 2000 DUI arrest and noted that he was never convicted. He told the investigator that he did not report his prior arrests on his 2017 SCA due to an oversight and because all of this information had been previously provided over the years and was provided during his initial security investigation and 10-year renewal process. He reiterated this explanation in his interrogatories. He admitted he had been drinking when he was arrested in 2000. Applicant testified that when he was specifically asked about his previous arrests, he disclosed them to the investigator. He did not otherwise because he thought he only had to disclose convictions. I did not find Applicant's testimony credible. (Tr. 68-73; GE 3)

In February 2019, Applicant was arrested for DUI. He said he did not think he had to report it to his employer if it was dismissed. He testified that he reported this DUI to his employer after it was dismissed. He said that at this point he learned that he was required to report his arrests. He said he thought if the case went away, he would not have to report it. (Tr. 80-86; GE 3, 4, 8)

The police report for his February 2019 arrest reflects Applicant's car was parked half on the pavement and half on a grassy area with its hazard lights on. Applicant was slumped in the seat and the car was running. The police officer could not conduct a field sobriety test because Applicant was too intoxicated. He testified he does not know what he was doing at the time. He refused to take a breathalyzer. During a December 2021 interview with a government investigator, Applicant said he entered a pretrial diversion (PTD) program and over a seven-to-eight-month period, he was required to be tested for alcohol consumption. He was also required to attend an alcohol awareness class through Alcoholics Anonymous (AA). Applicant testified that after going through the PTD program, this was the first time he thought he might have an alcohol problem. Applicant continued to consume alcohol. (Tr. 80-87; GE 4, 8)

In May 2019, Applicant was interviewed again by a government investigator and asked he if had ever been arrested or charged with an alcohol-related offense. The investigator indicated Applicant responded "no." Applicant disputes that and said he told the investigator he had been charged but not convicted. In this interview they discussed his 2013 DUI arrest. He denied he had been drinking. This contradicts the police report and his testimony. He disclosed to the investigator he had also been arrested in February 2019 and charged with DUI. At the time of the interview, the charges had not been adjudicated. He admitted to the investigator that he had been consuming alcohol prior to his arrest. He said this type of incident was unlikely to recur because he does not drink and drive. (Tr. 88-90; GE 3)

Applicant did not disclose his May 2000 or September 2013 arrests and charges for DUI or "wet reckless" or any alcohol related offenses in his 2007 or 2017 SCA. It is unknown who he provided the information to over the years other than a letter he said

he wrote to the government. No evidence was admitted showing he provided information about his 2013 DUI arrest and charge.

In June 2019, Applicant responded to government interrogatories. Question 2 asked: Have you consumed any alcohol since January 2019. He responded "no." At his hearing, he testified that he did consume alcohol after that date. As noted, he was arrested in February 2019 and charged with DUI. (Tr. 87-90; GE 4)

In response to the June 2019 interrogatories, Applicant wrote:

> I do not consider myself as a heavy drinker or an irresponsible drink[er]. I am not an alcoholic, nor do I drink on a[n] everyday or every month basics [sic]. I have never been convicted of DUI or for having a drinking issue. (GE 4)

In June 2020, Applicant was arrested and charged with DUI. He was found passed out at the wheel of his car while sitting at a traffic light. He took a breathalyzer test at the scene and recorded a .24% BAC. The police offered to take him to the hospital because he was so intoxicated. Applicant testified he was not feeling well and had taken some cold medicine. Once at the police station, he refused to take another breathalyzer. Applicant was convicted of DUI. He was ordered to pay a fine and sentenced to 365 days in jail, suspended; and attend a highway intoxication seminar. Applicant admitted he was driving while intoxicated. According to the employer's documents, in October 2020, Applicant informed them he was arrested on August 21, 2020, for DUI. Applicant testified that his June 2000 conviction was appealed and was sent to the circuit court where he was approved to participate in a PTD program. (Tr. 90-106; GE 5, 7, 11; AE E)

In January 2021, Applicant was arrested and charged with DUI. It is unclear if he was still participating in a PTD program from his June 2020 DUI charge. He told the police he had consumed two beers. He failed a field sobriety test and recorded a .11% BAC. Applicant disputed the accuracy of the BAC saying it took numerous attempts to complete it. The police officer noted that Applicant had trouble following simple instructions. Applicant does not believe he was intoxicated or impaired. He admitted he had a few beers. His case was adjudicated in a PTD program. He continued to drink after his January 2021 arrest. He testified that he last consumed alcohol in July 2021. He said he realized he needed to stop drinking alcohol. (Tr. 106-118; GE 3, 6, 12; AE E, G, I)

The requirements of this PTD program were to complete a 12-week 36 session alcohol rehabilitation class, be tested for alcohol consumption, and perform community service. Applicant went to court ordered AA but did not resume when the PTD program ended. He successfully completed the alcohol rehabilitation class and found it very helpful. According to the director who testified on his behalf, he was a model student. Since completion he will occasionally stop by the class and inspire those who are

attending the class. He found the class very helpful. He testified that he no longer has a desire to drink alcohol. (Tr. 112-127; AE E)

In Applicant's government interrogatories from June 2022, he made a correction to his summary of interview from November 2018. He stated he told the investigator that he had been charged with an offense involving alcohol, but he was not convicted. He stated:

> The reason there was an oversight in the information is due to the fact that all of this information has been provided over the years as it relates to my security clearance and wasn't hidden in any way, due to the fact that the case was 22 years ago, but again, never hidden and provided during my initial security clearance investigation and 10 year renewal process. (GE 3)

Applicant testified that he did not report the first four DUI arrests to his employer until 2020 when he became aware of the requirement to do so because he held a security clearance. He reported his 2021 DUI. He explained he did not report the pre-2020 charges because he believed if the charge was dismissed the case was resolved, and he was not required to report it. (Tr. 53-58)

Applicant testified that he was a social drinker. He would not drink at home alone. He did not realize for a period that he might have an alcohol problem. His mistake was drinking and driving. He stated the alcohol class he was required to take as part of his last PTD was very helpful. He took responsibility for his conduct. He believes he is not a threat to national security and can be trusted. (Tr. 40-46)

Applicant admitted he is an alcoholic. He testified that he no longer consumes alcohol. He does not have the urge to drink. He does not go to clubs. He used to drink on the weekends and admitted he would occasionally drive after consuming alcohol. His cousin is a recovering alcoholic and acted as his sponsor while he was attending the court-ordered classes. He still has regular contact with his cousin. (Tr. 127-132)

The chief executive officer (CEO) of the rehabilitation center that Applicant attended testified on his behalf. He described him as an excellent participant who helped others and followed all of the rules. He never missed a session. He believes Applicant is in recovery. After Applicant completed the course, he would return periodically. The CEO explained that anyone in recovery can relapse, but Applicant has been sober for about two years. (Tr. 136-139; AE A)

A substance abuse counselor employed where Applicant attended rehabilitation testified that participants are welcomed to return after they graduate. She has been employed at the facility for a month. Applicant's counselor during his rehabilitation thought he would benefit from an evaluation. The substance abuse counselor was not involved in his treatment. She conducted an alcohol substance abuse measurement metric on Applicant as an evaluation. He was required to complete a questionnaire and

she met with him for about an hour and conducted an objective test. Her testing revealed he had a very low score indicating he was likely in a low-risk category for relapse. She was not focused on his past alcohol-related incidents, as this is not part of the testing process but is focused on his recovery. (Tr. 139-158)

Applicant provided a letter from his employer that noted he is an employee in good standing. His performance is characterized as "successful" based on his last performance assessment. He was recognized in November 2022 for his contributions and received a special recognition bonus. He was counseled in November 2021 by the FSO and provided additional training regarding appropriate notifications and has completed his annual security refresher training in 2021, 2022, and 2023. (AE J)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 access to classified information will be resolved in favor of 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 not drawn 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. Under Directive ¶ E3.1.15, 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 to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it

grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 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 security clearance 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 nation security eligibility determination, or other official government representative; and
>
> (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct

includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; . . ..

Applicant's September 2007 SCA asked if he ever had been charged or convicted of any offense involving alcohol or drugs. He responded "no." I did not find Applicant's explanations credible throughout his hearing and find he deliberately failed to disclose he was arrested for DUI and although the charge was reduced to "wet and reckless" this was still an alcohol-related offense required to be disclosed on his SCA.

Applicant's November 2017 SCA asked if in the last seven years he had received a notice to appear in a court proceeding; if he had been arrested by any police officer or law enforcement official; and if he had been charged, convicted, or sentenced for a crime in any court. He responded "no." Applicant was arrested for DUI in 2013. I did not find his explanations credible and find he deliberately failed to disclose this alcohol-related offense.

Applicant's November 2017 SCA asked him about other offenses that were not previously disclosed and if he had ever been charged with an offense involving alcohol or drugs. He responded "no" and did not disclose his May 2000 DUI charge or his 2013 DUI charge.

Applicant disputes that during his November 2018 interview with a government investigator that he failed to disclose his May 2000 and September 2013 DUI charges. I find there is some question as to whether Applicant volunteered the information about the May 2000 DUI arrest or if the disclosure only came after he was confronted with the information. I find the evidence is insufficient to conclude he provided false information about the May 2000 DUI charged and conclude in his favor that part of the allegation in SOR ¶ 2.e.

Regarding disclosing to the government investigator information about his September 2013 DUI charge, the evidence supports he did not disclose this information during the November 2018 interview. This information was later disclosed during his May 2019 interview. I did not find Applicant's explanations credible and believe he deliberately failed to disclose his September 2013 DUI charge during his November 2018 subject interview. The above disqualifying conditions apply.

I did not find Applicant credible that he believed he did not have to disclose his arrests and charges because he was not convicted. He was originally charged with DUI in May 2000. That charge was reduced to "wet and reckless" which is an alcohol-related offense that should have been disclosed. Applicant makes no mention in his SCA that this offense involved alcohol. He specifically checked the "other" box instead of the box indicating the offense involved alcohol.

Applicant's five DUI arrests and charges were cross-alleged under the alcohol consumption and criminal conduct guidelines. There is sufficient evidence to apply AG ¶16(e) to his conduct.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant prove mitigation. 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.

There is insufficient evidence that Applicant made prompt, good-faith efforts to correct his omissions or falsifications made when completing his SCA or statements made to the government investigator. AG ¶ 17(a) does not apply.

Applicant's omissions and falsification are not minor. I did not find his explanation that he believed he only had to disclose convictions on his SCA credible. He clearly was convicted of the May 2000 criminal offense that was alcohol-related yet still did not disclose it. His omissions and falsification are serious and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17(c) does 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 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 and charged with DUI in May 2020, September 2013, February 2019, June 2020, and January 2021. The evidence supports he had

consumed alcohol before he was arrested each time. The above disqualifying conditions apply.

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 and 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.

As noted above in the personal conduct guideline analysis, I have concerns about Applicant's candor and credibility. Applicant was involved in five alcohol-related incidents. After his 2021 DUI arrest and charge, he was ordered to attend AA and participate and complete a substance abuse and treatment program. He did so successfully. Applicant testified that he has not consumed alcohol since July 2021. He previously stated that he did not intend to be involved in any further alcohol-related incidents and had stated in interrogatories that he had not consumed alcohol after January 2019 when he actually did and was arrested again in February 2019 for DUI.

Applicant acknowledged he is an alcoholic. He testified he talks to his cousin who is also an alcoholic, and he is his sponsor. However, he has not attended AA since he completed the mandatory requirement by the court, and it is unknown if his cousin is affiliated with AA or another substance abuse program. The CEO of the rehabilitation and treatment center where Applicant attended stated that he occasionally stops by and is very helpful to others. A counselor who evaluated Applicant believes he is at low risk for relapse. There is evidence that he acknowledges his pattern of maladaptive alcohol use. Applicant has a 20-year history of alcohol issues. He recently acknowledged he has an alcohol problem but there is limited corroboration as to him being involved in a structured support system. In the past, he has not been honest about his alcohol use.

Despite some evidence of mitigation, I cannot find that sufficient time has passed to conclude future behavior is unlikely to recur. I find AG ¶ 23(a) does not apply.

There is insufficient evidence that Applicant is currently participating in counseling or treatment. Therefore, I find AG ¶ 23(c) does not apply. Although, Applicant stated he has not consumed any alcohol since July 2021, based on his long history of alcohol use, numerous alcohol-related incidents, and credibility issues, despite some evidence of mitigation, it is insufficient to fully mitigate the security concerns raised. I find AG ¶¶ 23(b) and 23(d) have minimal application.

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 is potentially applicable:

> (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
>
> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant was arrested and charged five times for DUI. The evidence supports that he consumed alcohol before he was arrested. Some charges were reduced or dismissed, and others were adjudicated through PTD programs. The above disqualifying conditions applies.

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 been charged five times with DUI from 2000 to 2021. Although, he was not convicted, he was repeatedly arrested for driving after he had consumed alcohol. His conduct raises questions about his judgment, reliability, and trustworthiness. The same analysis under Guideline G, alcohol consumption and Guideline E, personal conduct security concerns apply under this analysis. Although, there is some evidence that Applicant may no longer be consuming alcohol, it is too soon to conclude that future criminal conduct is unlikely to recur. I find the above mitigating conditions have some application, but they are insufficient to fully mitigate the criminal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G, E, and J in my whole-person analysis.

Applicant failed to meet his burden of persuasion. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concern arising under the personal conduct, alcohol consumption, and criminal conduct guidelines.

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-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.d:	Against Applicant
Subparagraph 2.e:	Against Applicant (excepting "1.a")
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

_____
Carol G. Ricciardello
Administrative Judge