



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



In the matter of:)	
)	
)	ISCR Case No: 22-01054
)	
)	
Applicant for Security Clearance)	

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Christopher Snowden, Esq.

11/24/2023

Decision

BENSON, Pamela, Administrative Judge:

Applicant failed to mitigated the criminal conduct, alcohol consumption, and personal conduct security concerns. Not enough time has elapsed since he engaged in criminal and alcohol-related behavior to show that future misconduct is unlikely to recur. National security eligibility is denied.

Statement of the Case

On November 17, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J (Criminal Conduct), G (Alcohol Consumption), and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

Applicant provided an undated response to the SOR, and requested a hearing before an administrative judge. (Answer) The case was assigned to me on May 5, 2023. Applicant obtained an attorney, and after coordinating with all parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 18, 2023, setting the hearing for August 30, 2023. This hearing was continued for good cause at the request of Applicant's attorney. A second hearing notice was issued on September 8, 2023, setting the hearing for September 27, 2023. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 9; and Applicant offered Applicant Exhibits (AE) A through U. Except for GE 8 and 9 (see discussion below), all of the proffered exhibits were admitted into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. After the hearing, Applicant timely submitted seven documents labeled AE V through BB. AE V through BB were admitted, notwithstanding an objection made by Department Counsel, discussed below. DOHA received the hearing transcript (Tr.) on October 6, 2023, and the record closed on October 18, 2023.

Evidentiary Matter

Applicant's counsel objected to GE 8 and 9, which were unauthenticated summaries of Applicant's background interview with a government security investigator. The investigator was not called as a Government witness, and I therefore excluded those reports from being considered as evidence. During the hearing, I advised counsel that Applicant could be questioned about information he provided during his background interviews, and Applicant could also choose to adopt any information reported therein.

During the hearing, Department Counsel noted a concern about the relevance of AE P, entitled "Hyperglycemia in diabetes." Applicant's counsel said he would address this concern during his case. Department Counsel did object to the admissibility of the post-hearing documents of AE W, AA and BB, but asked that limited weight be given to the articles about diabetic ketoacidosis. Applicant did not present medical records or expert testimony to support his claim that he was, in fact, suffering from diabetic ketoacidosis on the night he was arrested for driving while intoxicated in November 2021. I admitted AE W, AE AA, and AE BB into evidence; however, I made it clear that whatever weight I would assign these documents would be left to my judicial discretion. The email exchanges between the parties and the judge about the admissibility of these documents is admitted as Hearing Exhibit (HE) 2.

Findings of Fact

Applicant denied all allegations contained in the SOR except SOR ¶ 1.d. (Answer) During the hearing, Applicant amended his Answer to change all of his denials to admissions under Guidelines J, G and E. (Tr. 10) After a thorough and careful review of the admissions, pleadings, and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He earned an associate's degree in 2004. He has never been married, and he does not have any children. Since September 2017, he has been

employed by a federal contractor as a machinery maintenance mechanic. He is in the process of applying for a DOD security clearance. (GE 1; Tr. 29-30; AE K)

Criminal Conduct:

In order to keep the events in chronological order, I will reverse the order of the SOR allegations.

Applicant was arrested in December 1990 and charged with disorderly conduct. (SOR ¶ 1.k) He testified that he was staying in a dormitory when a fight occurred. The police report in evidence showed that the victim specifically identified Applicant as being one of the main assailants. The victim had seen Applicant holding a gun, thought to be a BB-gun, behind his back. The police found five rounds of .38spl, two WCC round nose lead rounds with brass cases, two federal round nose lead rounds with nickel cases, and one Winchester .38+P jacketed hollow point round, in Applicant's pants pocket. Applicant admitted that the police did find his bullets, but he claimed that his bullets were on a keychain that had been discovered in his dresser drawer. There was no mention in the police report that these bullets were found on a keychain or recovered from his dresser. Applicant admitted he had missed the original court date, and a bench warrant had been issued for his arrest. He was found guilty of an ammunitions violation and disorderly conduct. He paid restitution and a fine. He denied he had a BB gun or a pellet pistol the night of his arrest. (Tr. 77-82; GE 2, 6, 7)

In September 1992, Applicant was charged with open container in a vehicle. An arrest warrant was outstanding for Applicant's contempt of court charge, as noted above, and he was taken into custody. This offense was not alleged in the SOR. (GE 2, 6)

Applicant was arrested in November 1991 and charged with aggravated assault. (SOR ¶ 1.j) He testified that his younger sister had been beat up by a group of girls and returned home. The parents of the girls came to his house to confront his sister. One of the parents pushed his sister, so he got in the middle and he may have pushed the parent off of his younger sister. He believed a neighbor had called the police and he and one of the parents were arrested. At court they both decided that they did not want to press charges and the case was dismissed. (Tr. 74-77; GE 2)

SOR ¶ 1.i alleges that on September 14, 1992 Applicant was arrested and charged with disorderly conduct. Applicant testified that he was in a group of eight friends, and they had just finished watching a movie. They were in a strip mall playing around, acting immature, and pushing each other when the police arrived and arrested them for disorderly conduct. He was 23 years old at the time. They all appeared before the judge and were found not guilty. (Tr. 71-73; GE 2)

In about September 1996, Applicant was arrested and charged with disorderly conduct. (SOR ¶ 1.h) Applicant testified that some of his family members were in the courtroom because the defendant had killed his father after driving under the influence of alcohol. Some of the defendant's family members were also in the courtroom, and Applicant had witnessed one member shove his mother. He got in between his mother and the defendant's family member and a big commotion broke out in the courtroom. The

bailiff charged all of the family members with disorderly conduct. The charges were subsequently dismissed. (Tr. 70-71)

SOR ¶ 1.g alleges that Applicant was arrested in April 2004 and charged with aggravated assault. He explained that his second oldest sister suffers from bipolar disorder, and she threatened their mother. Applicant and his brother told her to leave the house. His sister called the police and reported false accusations about him and his brother. They were both arrested despite neither one of them had touched their sister. The charges against them were eventually nolle prosequi. (Tr. 66-70)

SOR ¶ 1.f alleges that Applicant was arrested in June 2007 for soliciting prostitution. He testified that an old female friend of his had asked him to meet with her because she had just learned that Applicant's mother had passed away in 2006. He did not know that she was a prostitute. He met with her in his car in front of her grandmother's house. The police pulled up behind him, questioned them separately, and then informed Applicant that he was being arrested for soliciting prostitution. He claimed they had been talking in the car for approximately 30 minutes. Applicant presumed his female friend must have said something incriminating to the police for them to arrest him, or speculated that maybe the police assumed he had been doing something illegal because they were aware this female was a prostitute. Applicant stated the judge dismissed the charge against him. (Tr. 58-66)

In October 2010, Applicant was arrested for driving under the influence of alcohol (DUIA). (SOR ¶ 1.e). He testified:

I fractured of a bone in my foot and I had a boot cast on. So I was going to CVS pharmacy to pick up a prescription. And as I was coming out of the pharmacy, it was, a commotion was going on. I was in Chicago at the time. It was commotion that was going on in that area. I don't know what happened, but it was a commotion that was going on. Before I even got to the car, the police had pulled, had stopped me before I got into the car. And as I didn't even get into car to drive it, they were saying that, you know, they charged me with a DUI. (Tr. 52)

Applicant stated that he believed he was arrested due to racial profiling, and that the police officer did not even offer him a field sobriety test. Although there was no arrest record provided, a certified statement of disposition showed that Applicant was found not guilty of the DUIA. This alcohol-related arrest was not listed on his February 2022 SCA. (Tr. 54; AE E)

In June 2011, Applicant was arrested for driving on a revoked/suspended license. (SOR ¶ 1.d). He testified that although he was found not guilty of DUIA in May 2011, he was unaware that his driver's license had been suspended following this arrest. He also was unaware that he needed to pay a fee to have his driver's license reinstated. He explained this to the judge and was sentenced to perform community service. The charge was subsequently dismissed. (Tr. 56-58; GE 2)

In February 2020, Applicant was arrested and charged with domestic battery/physical contact (SOR 1.c.) that led to a protective order against Applicant, and his August 2020 arrest for the violation of that protective order (SOR 1.b). Applicant testified that in February 2020, he resided with his fiancée (F), his fiancée's son (FS), the son's partner (SP), and the son's children. At the time, SP was prohibited by Department of Children and Family Services from supervising the children. While F and FS were away, Applicant became upset that SP was left to care for the children. FS returned home and he and Applicant got into an argument. Eventually F arrived home, and she called the police to report that Applicant had just pushed her. She made additional false allegations against Applicant to police. He was arrested and charged with domestic battery. On February 25, 2020, F filed for a protective order against Applicant. While an interim protective order was in effect, F claimed that Applicant circled her residence in his car; however, Applicant countered that he no longer had the make and model of car F had identified. (Tr. 35-52; AE C, D, V, X; GE 1, 2, 5)

Applicant submitted documentation that showed his newer car, a Honda CRV, was purchased on May 6, 2020. He possessed his original car for over two months after the interim protection order had been issued. On February 9, 2021, this arrest was alerted through the DOD Continuous Evaluation Program because Applicant had failed to report it to his employer, as required. In April 2021, over a year since his arrest and due to delays from the pandemic, the judge found Applicant not guilty of the two charges. In September 2021, his ex-fiancee filed another protective order against him for allegedly making phone calls. She failed to appear in court and the protective order was vacated in October 2021. Applicant listed this arrest on his February 2022 SCA. (Tr. 35-52; AE C, D, V, X; GE 2, 5)

SOR ¶ 1.a alleges that Applicant was arrested in November 2021 and charged with DUIA– 2nd offense, improper traffic lane usage, and operating an uninsured motor vehicle. The police report disclosed that Applicant had reported that he was on his way home from his sister's birthday party. Applicant at first denied he consumed any alcohol, but he later admitted to the police officer that he had consumed one alcoholic beverage. The police report also disclosed that Applicant had participated in a breathalyzer test and appeared to have urinated in his pants. He was placed under arrest after his blood alcohol content (BAC) was measured 0.245%. Applicant's car appeared to have been involved in a hit and run accident since there was significant damage to the front of the car, the front passenger tire was blown, and Applicant had been driving on the rim. Applicant testified that he told the police officer that he was not feeling well and that he needed medical treatment. The police dropped him off at his home

Applicant testified that he had been to the dentist to have a tooth removed on Thursday. He went home and was not feeling well, and he was not eating or taking his type II diabetes medication. Around 4:00 AM on Sunday, he decided to drive himself to the hospital. He was in a state of confusion and was pulled over by the police for driving under 20 mph in a 45 mph zone. He did not have a sister who had a birthday during the month of November, and he admitted he was very confused when speaking with the police officer. Applicant's counsel asked him if he was familiar with hyperglycemia. Applicant stated that this condition occurs when your blood sugar is not properly controlled with medication. The symptoms include confusion, loss of motor skills, and, if left untreated, it can ultimately lead to diabetic stroke. He also stated that he takes

medication for type II diabetes, but he had not personally experienced symptoms of hyperglycemia because, for the last 15 years, he had always taken his diabetic medication as prescribed. The only time he did not take his diabetic medication was during this particular incident while he was suffering from extreme tooth pain. Applicant testified that he had not consumed any alcohol that night or during the past 27 years after his father was killed by a drunk driver in 1996. (Tr. 31-38; AE Q, R, S, U; GE 1, 2, 3, 4)

Applicant testified that after the police dropped him off at his home he called 911 to go to the hospital. A blood sample was taken that showed his blood sugar was high, reportedly 126. He was held at the hospital for about four hours and released. He eventually hired an attorney who recommended that he plead guilty to the reduced charge of reckless driving. In December 2022, Applicant pled guilty to reckless driving. He was required to enroll in an alcohol program, use an alcohol-testing device for one year, attend a victims-impact panel, and pay fines of \$2,502. His required use of the testing device was later reduced to six months after he successfully passed all alcohol-breath tests. He was also placed on probation for two years. (Tr. 38-43; AE A, B, D, F, T; GE 4)

At the time of the hearing, Applicant remained on probation, which was scheduled to terminate on December 6, 2024. He disclosed this arrest on his February 2022 security clearance application (SCA). He listed that the DUIA charge was pending and that he “was on medication for tooth pain from the doctor.” There is nothing in the police report that indicated Applicant had told the police officer that he was not feeling well or that he needed medical attention. He had been taken to the police station following his arrest, and he had refused to provide another breath sample or answer police questions. After completing the booking process the police dropped him off at his home. Applicant testified that he was very confused, feeling terrible, and he was likely suffering from hyperglycemia at the time of his arrest. Since he had not consumed any alcohol, he assumed diabetic ketoacidosis could have caused him to provide a false positive on the breathalyzer test, based on the medical reports and studies in the record. (Tr. 38-43; AE A, B, D, F, T; GE 1, 4)

Applicant testified that he did not specifically request any alcohol test or toxicology tests when he was hospitalized following his arrest. The hospital records reflected that Applicant had apparently complained of abdominal pain following a motor vehicle accident. There was no evidence that Applicant entered the hospital due to high blood sugar, tooth pain, hyperglycemia, or diabetic ketoacidosis. The medical records disclosed that Applicant had no evidence of acute abnormality in the chest, abdomen, or pelvis following a CT scan. His lab results showed that he scored within the normal range, low range, as well as in the high range in several test areas. There is no documentary evidence that Applicant experienced, tested, or was treated for high blood sugar levels, hyperglycemia, or diabetic ketoacidosis. (Tr. 44; AE T, Y)

The medical information, studies, and reports in the record noted that hyperglycemia occurs usually when a person with diabetes skips insulin or other medications prescribed to lower blood-sugar levels. It stated that “Hyperglycemia usually doesn’t cause symptoms until blood sugar (glucose) levels are high – **above 180 to 200 milligrams...**” (emphasis added; AE P) The lab result of Applicant’s blood sugar level following his DUIA arrest was reported at 126. (AE T) In addition, the Mayo Clinic’s

medical report stated that symptoms of hyperglycemia develop slowly over several days or weeks. (AE P) In this instance, Applicant had a tooth pulled on Thursday and on Sunday morning at 4:30 a.m., he was arrested for DUIA and claimed he was likely suffering from hyperglycemia. Based on this information it does not appear, nor is there any evidence to support, that Applicant was suffering from hyperglycemia at the time of his second DUIA arrest. Applicant's systems are consistent with a highly intoxicated individual whose BAC was measured at 0.245%. (GE 4)

Another medical article described diabetic ketoacidosis as a severe medical condition that is life-threatening. This condition develops after an individual suffers uncontrolled hyperglycemia. (AE AA) Because the record evidence did not establish Applicant suffered from hyperglycemia, Applicant similarly did not establish that he suffered from diabetic ketoacidosis. Therefore, the discussion of this medical condition is irrelevant and not entitled to much weight in my decision. (AE P, W, AA, BB)

Applicant was sentenced to enroll in the Level 2 intensive outpatient program (IOP). The one-page IOP summary from an addiction counselor stated that Applicant had successfully completed the program on January 27, 2022:

[Applicant] has been encouraged to regularly engage in community support group meetings (e.g. 12-step groups), get a sponsor; engage regularly in mental health treatment and continue to actively apply what had been learned in group. (AE J, Z)

There was no diagnosis or prognosis given in the IOP summary, but based on the comments provided, it appears that Applicant was treated for some type of substance misuse. The addiction counselor's recommendation that Applicant participate in a continuing support group and obtain a sponsor infers that Applicant had misused some type of substance. Applicant did not disclose this alcohol treatment, which he had just completed, on his February 2022 SCA. He did not provide complete treatment records except for the one-page summary. There is no evidence in the record that Applicant is complying with the addiction counselor's recommendations. (Tr. 44; AE J, Z; GE 1)

Applicant has been employed by a federal contractor for six years. He stated that he just recently found out that he is required to report any arrest to his employer. He initially denied that the employer provided annual security briefings, but then he changed his mind and admitted they do have annual security briefings. The reporting requirement, however, had not been discussed during those earlier security briefings. He did not report his February 2020 arrest for domestic assault/physical contact, his August 2020 arrest for violation of a protection order, or his November 2021 arrest for DUIA to his employer, as required. (Tr. 98-100)

Alcohol and Personal Conduct:

Paragraph 2 of the SOR (Guideline G) cross-alleged the two DUIA arrests (SOR ¶¶ 1.a and 1.e), and Paragraph 3 of the SOR (Guideline E) cross-alleged all of the criminal allegations cited under Paragraph 1.

Applicant submitted seven character-reference letters. Three letters were authored by former or current co-workers, two letters were provided by his sisters, and another letter was provided by a colleague. A one-page summary was also submitted from the Level 2 IOP addiction counselor, as previously discussed. All six references agreed that Applicant was honest, trustworthy, and possesses a great deal of integrity. (AE J, U, Z)

Applicant provided a 2018 and 2021 employee year-end performance reviews. He was rated a “successful performer” those two years. I did not see his year-end performance reviews for 2019, 2020, or 2022. Applicant also submitted several certificates of achievement, recognition and awards from 2001 to 2006. (AE H, M)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2 describing 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline J: Criminal Conduct

The security concern related to the criminal conduct guideline 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.

AG ¶ 31 lists conditions that could raise a security concern and may be disqualifying. Three potentially apply:

- (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

The record evidence establishes AG ¶¶ 31(a), 31(b), and 31(c). Applicant was involved in multiple arrests between 1990 and 2021, and he is currently on probation until December 2024.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; 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's pattern of criminal conduct spans over three decades and raises serious security concerns. He remains on probation until December 2024 due to his November 2021 conviction. Insufficient time has passed to demonstrate that Applicant's criminal conduct will not recur. Based on those facts, his criminal conduct continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment. Applicant failed to mitigate the criminal conduct security concerns.

Guideline G: Alcohol Consumption

AG ¶ 21 describes the security concern about 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 provides a condition that could raise a security concern and may be disqualifying as follows:

(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.

The record evidence establishes AG ¶ 22(a). Applicant was involved in two alcohol-related arrests in 2010 and 2021, and his November 2021 BAC recording was extremely high at .245%. There is no evidence he followed treatment recommendations from his Level 2 IOP treatment he completed in January 2022.

AG ¶ 23 lists four conditions that could mitigate security concerns:

(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.

Applicant denied that he has consumed any alcohol since his father was killed by a drunk driver in 1996. When discussing his arrests, he denied responsibility or culpability for almost every single arrest alleged in the SOR. When addressing his most recent arrest, he claimed he needed immediate hospital treatment for his high blood sugar and/or tooth pain when he was arrested by police in November 2021. He initially denied drinking any alcohol but then he admitted to police he had consumed one alcoholic beverage. His blood alcohol content registered extremely high at .245%, well above the legal limit. There is no mention in the police report of any request for immediate medical treatment. Applicant reiterated that immediately following his arrest he went to the hospital to get his high blood sugar levels under control. The post-hearing submission of the hospital records does not support his testimony. The records clearly indicate that he received a CT scan on his chest, abdomen, and pelvis following a motor vehicle accident. There was nothing in the hospital record that indicated Applicant complained of symptoms consistent with high blood sugar levels, hyperglycemia, or diabetic ketoacidosis, provided test results establishing these conditions, or has ever been treated for these conditions. Given the pattern of discrepancies between the documentary evidence and Applicant's claims, I did not find his testimony credible.

Notwithstanding Applicant's completion of alcohol treatment, the addiction counselor's aftercare recommendations support the conclusion that Applicant met the criteria for some type of substance abuse disorder necessitating further care. He was encouraged to regularly engage in community support group meetings (e.g. 12-step groups), get a sponsor; engage regularly in mental health treatment and continue to actively apply what had been learned in group. There is no evidence that Applicant adhered to the aftercare recommendations. Based on him being an unreliable witness, there is insufficient evidence to establish mitigation under any of the above conditions. Applicant failed to mitigate the alcohol consumption security concerns.

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the

person may not properly safeguard classified or sensitive information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress, such as

(1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

All of the Guideline J allegations (¶¶ 1.a through 1.k) are cross-alleged under the current Guideline. Applicant's history of criminal conduct, two alcohol-related arrests, and probation until December 2024 support application of AG ¶¶ 16(d)(3) and 16(e)(1).

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Applicant is not a credible witness. His failure to accept responsibility for his misconduct and his misrepresentation of relevant facts indicate that he may be personally or professionally vulnerable if his criminal and alcohol-related misconduct were known to the community. Overall, he has shown little remorse or rehabilitation following his pattern of rule violations, and his behavior continues to cast doubt on his reliability, trustworthiness and good judgment. None of the mitigating conditions apply. Applicant has failed to mitigate personal 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(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) 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 national security eligibility must include an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines J, G, and E into my whole-person analysis.

Applicant was arrested on at least 11 occasions over three decades. He is currently on probation until December 2024. He has not been candid about the circumstances of his criminal and alcohol-related offenses. I find that more time is required without repeat offenses before Applicant can be considered successfully rehabilitated.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the criminal conduct, alcohol consumption and personal conduct.

Formal Findings

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

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.k:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	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 or continue Applicant's security clearance. National security eligibility is denied.

Pamela Benson
Administrative Judge