



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



In the matter of:)
)
) ISCR Case No. 22-02634
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines E (personal conduct), G (alcohol consumption), and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On April 5, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and J. Applicant responded to the SOR on April 25, 2023, and requested a hearing before an administrative judge. On May 10, 2023, Department Counsel amended the SOR and added additional allegations under Guidelines E and G. Applicant responded to the amendments on May 29, 2023. The case was assigned to me on October 3, 2023. The hearing convened as scheduled on November 8, 2023.

Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit documentary evidence. He submitted

three character letters that I marked as Applicant Exhibits (AE) A through C and admitted without objection.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He served on active duty in the U.S. military from 2003 until he was discharged with a general under honorable conditions discharge in 2009. He has worked for his current employer or a predecessor company on the same contract since 2009. He seeks to retain a security clearance, which he has held since he served in the military. He is a high school graduate. He has never married. He has one child. (Transcript (Tr.) at 22-23, 27-28, 46-47; GE 1)

Applicant has a history of criminal conduct. He was arrested in 1999, when he was about 14 years old, and charged with felony burglary, graffiti, and criminal mischief. He and some friends broke into an elementary school, stole several items, and spray painted a building. In 2000, when he was about 15, he was charged with terroristic threat and deadly conduct. He shot a mail truck with a BB gun. He was placed on probation. (Tr. at 23-26; GE 6)

Applicant submitted a security clearance application in December 2002 when he was going through the enlistment process. He did not report his criminal conduct as a juvenile because his recruiter told him it was not required. (Tr. at 12, 26-27; GE 9)

Applicant had alcohol-related disciplinary problems in the military. In January 2005, he drove to the front gate of a military installation while drunk. He was arrested for driving under the influence (DUI). He admitted that he was intoxicated, and his blood alcohol concentration (BAC) was about .2%. He pleaded guilty in front of a federal magistrate and was sentenced to probation, participation in an alcohol education/treatment program as directed, and a \$25 special assessment. (Tr. at 13, 28-32; Applicant's response to amended SOR; GE 6)

Drinking was prohibited while Applicant was deployed to Bahrain in 2008. In August 2008, he drank with some other servicemembers and got into an altercation. He was required to attend a two-week outpatient substance abuse program. (Tr. at 13-14, 31-33; Applicant's response to amended SOR)

Applicant had another alcohol-related incident in December 2008. He was drinking and got in a fight outside a bar. He was discharged with a general under honorable conditions discharge as an alcohol rehabilitation failure. (Tr. at 14-15, 33-35; Applicant's response to amended SOR)

Applicant was arrested in December 2014 and charged with driving while intoxicated (DWI). He admitted that he was drinking and "doing donuts" on the beach when his truck got stuck in the sand. He refused a breathalyzer test. He was accepted into a pretrial diversion program in August 2016. The charge was dismissed in August

2017 following the completion of the pretrial diversion program. (Tr. at 16, 21, 36-38; Applicant's response to amended SOR; GE 7)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in October 2015. (GE 5) He did not report any of his criminal charges under any of the questions, including questions that asked:

In the past seven (7) years have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court?

Are you currently on trial or awaiting trial on criminal charges?

Have you **ever** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses) and

Have you **ever** been charged with an offense involving alcohol or drugs?

Applicant testified that he did not intentionally provide false information on the SF 86. He stated that he put "no" to every question under the assumption that the government already knew everything about him. (Tr. at 15-16)

Applicant was arrested in January 2021. The police report indicates that three men reported that they worked in a market in an area where burglaries had occurred. An individual later identified as Applicant pulled his vehicle into the back of the market. They were suspicious and followed him home after he left. They went up to him after he pulled into his driveway. They described Applicant as belligerent and yelling, and he then pulled out a shotgun and loaded it. One of the men reported that Applicant said, "I've got something for you," and pointed the shotgun at him. Applicant then fired the shotgun at the man's vehicle, damaging a tire with the birdshot. Another man stated that Applicant pointed the shotgun at him, kicked him, and struck his truck's tail lamp with the shotgun, damaging the vehicle. (GE 2)

Applicant was charged with three felony counts of aggravated assault with a deadly weapon. He was required to wear an ankle monitor. In June 2021, an indictment was filed; Applicant's attorney entered an appearance; a \$40,000 bond was set; and Applicant had an arraignment hearing. He was admitted into the state's veterans court program in September 2022 and received a pretrial diversion program for 24 months. He handwrote a non-judicial confession as follows: "Got chased to my house by 3 or more individuals – I was intoxicated and when things [calmed] down, they walked away and I shot their truck with my shotgun because I was upset." (Tr. at 18; GE 2-4)

Terms of the pretrial diversion program include that Applicant report to a supervision officer at least once a month; not commit any crime; not travel out of state;

abstain from alcohol and illegal drugs; undergo screening and evaluation and any alcohol or drug rehabilitation program ordered by the probation department; complete an anger management program; submit to a random urinalysis; perform 180 hours of community service; observe a curfew from 9:00 p.m. to 6:00 a.m.; grant permission for any probation or pretrial services officer to enter his dwelling at any time to search the premises; and pay \$850 as a veterans treatment court fee. If he successfully completes the program, the charges will be dismissed. (Tr. at 18, 44-45; GE 2)

Applicant's current version of the January 2021 events differs from the three men's statements and from his own non-judicial confession. On March 20, 2023, he wrote in his response to DoD interrogatories:

On 1/12/21 I went duck hunting for the majority of the day and then to a restaurant to have dinner. After dinner I drove to a fish market and marina to visit a friend who had a houseboat at the back of the small property. At this point I was unaware that the property had been burglarize[d] recently. I drove my truck to the back of the property where the houseboat is located, I realized the person I was there to see was not at the boat. At this point it was dark out, I turned my truck around to leave and drove back the way I came.

Upon getting back to the parking lot three men came out of the building and continued to walk towards my truck in an aggressive manner yelling as I was leaving the property. I could see the men get in their trucks and start to follow me as I drove away. I started to speed up as they got closer, the situation turned into an aggressive and fast chase, I started to fear for my safety.

They continue[d] to chase me back to my house and to my driveway where I exited my vehicle and went inside my garage with my shotgun that I had in my truck from duck hunting. Two trucks pulled up to my driveway and house, one of the men got out [and] walked up my driveway and into my garage in an aggressive and threatening manner. At that point I was afraid for my life and my family inside the house. I loaded the shotgun pointing it at the man in my garage, yelled at the man to get out of my garage and off my property. He turned around and walked back down my driveway as I follow[ed] from a distance. At this point I was yelling at the men to leave, I was scared, the circumstances had my adrenaline pumping giving me shakes.

That is when the gun that was pointed down misfired and hit one of the truck[']s wheels a few feet away at the end of my driveway. One of the other men got out of another truck [and] chased me back to my house, I felt threatened and kicked at the man yelling at him to leave. I hit the taillight with the butt of the shotgun and broke the taillight. The men drove away in their trucks and shortly after the police arrived. (I have broken one

long paragraph down into four shorter paragraphs for ease of reading.)
(GE 4)

Applicant's testimony was not completely consistent with his above statement. He stated that he went duck hunting earlier in the day and had some drinks, but he was not intoxicated during the incident. He stated that he was duck hunting for 10 to 12 hours and had "[n]o more than maybe one [drink] per hour." He stated the shotgun discharged accidentally when one of the men started fighting with him. He admitted that he hit one of the men's truck with the butt of his shotgun, and he "maybe punched or kicked one of the other guys." He stated that he wrote in the non-judicial confession "what the lawyer told [him] to write down." (Tr. at 16-18, 38-43)

The DoD learned of the 2021 arrest through the Continuous Evaluation Program. On February 5, 2021, the DoD reported the arrest in the Defense Information System for Security (DISS) and requested an incident report on the arrest, with supporting documentation. (GE 8)

Applicant submitted an SF 86 in July 2021. (GE 1) He did not report any of his criminal charges under any of the questions, including questions that asked:

In the past seven (7) years have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court?

Are you currently on trial or awaiting trial on criminal charges?

Have you **ever** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses)

Have you **ever** been charged with an offense involving firearms or explosives? and

Have you **ever** been charged with an offense involving alcohol or drugs?

Applicant denied that he intentionally provided false information on the SF 86. He stated his attorney told him that he did not have to report the 2021 arrest because he had not been charged or convicted. He did not have a good explanation for why he failed to divulge the arrest. Additionally, he had not been convicted, but he had been charged and an arraignment hearing was held in June 2021, the month before he submitted the SF 86. He stated that he forgot about the older charges; he thought the government already knew about the information; and the 2014 DUI had been dismissed and it was past the seven-year reporting period. (Tr. at 18-22)

I did not find Applicant credible. I find the police report of the 2021 arrest to be far more reliable than Applicant's recent versions of the events. His recent descriptions of the January 2021 events are not logical; there are inconsistencies between his response to interrogatories and his testimony; and his response to interrogatories and testimony are both inconsistent with his non-judicial confession (three distinct versions of how the shotgun was fired). I also find that he intentionally provided false information about the incident in his response to interrogatories when he stated the shotgun "misfired." I further find he intentionally provided false information on the 2015 and 2021 SF 86s (discussed further in the analysis).

Applicant submitted letters attesting to his excellent job performance and strong moral character. He is praised for his attention to detail, leadership, respect for others, work ethic, and trustworthiness. He is described as "a family-oriented person who has always presented himself with levelheadedness and grace." (AE A-C)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant 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 EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

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

Criminal activity creates doubt about an Applicant’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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 SOR alleges the 2021 arrest, and that Applicant will be under supervision as part of a pretrial diversion program until at least July 2024. AG ¶ 31(b) is applicable. Everything about the pretrial diversion program reads like probation, including that at least part of it is monitored by the state probation department. It is not technically probation, and AG ¶ 31(c) is not technically applicable. However, the same concerns generated by an individual being on probation are also generated here.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following 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;

(c) no reliable evidence to support that the individual committed the offense; 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.

The charges against Applicant are serious. They are on hold pending his successful completion of the veterans court pretrial diversion program. Most importantly, I do not believe him. I find he was dishonest about the incident in his response to interrogatories and at his hearing. Absent complete candor, there can be no mitigation. His criminal conduct continues to cast doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations.

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 and DWI in 2005 and 2014. He had two alcohol-related incidents in the military, and he was intoxicated at the time of the 2021 incident with a shotgun. 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;

(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.

All of Applicant's misconduct as an adult has been alcohol related. He has not fully accepted responsibility for that misconduct, nor the influence alcohol had on his actions. He is required by the pretrial diversion program to abstain from alcohol, and there is no evidence he has violated that provision. Nonetheless, I have lingering doubts about his drinking and the extremely poor judgment he exhibited while drinking. None of the mitigating conditions are sufficiently applicable to overcome concerns about Applicant's alcohol use, reliability, trustworthiness, and judgment.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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

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

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; 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 . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶ 2.a

SOR ¶ 2.a alleges that Applicant intentionally falsified the 2021 SF 86 when he failed to report the January 2021 arrest and charges under the questions that asked:

In the past seven (7) years have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

In the past seven (7) years have you been charged, convicted, or sentenced of a crime in any court? and

Are you currently on trial or awaiting trial on criminal charges?

Applicant stated his attorney told him that he did not have to report the 2021 arrest because he had not been charged or convicted. He did not have a good explanation for why he failed to divulge the arrest. Additionally, his testimony that he had not yet been charged when he submitted the SF 86 is inaccurate. He had been charged, an arraignment hearing was held in June 2021, the month before he submitted the SF 86, and he was awaiting trial on those criminal charges. He intentionally provided false information on his 2021 SF 86 when he failed to report his arrest and charges earlier in the year. AG ¶ 16(a) is applicable to the omissions on the 2021 SF 86.

SOR ¶ 2.b

SOR ¶ 2.b alleges that Applicant intentionally falsified the 2021 SF 86 when he failed to report the January 2021 charges, the 2005 and 2014 DUI and DWI charges, and his felony burglary charge in 1999 under the questions that asked:

Have you **ever** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses)

Have you **ever** been charged with an offense involving firearms or explosives? and

Have you **ever** been charged with an offense involving alcohol or drugs?

I am not convinced by substantial evidence that Applicant intentionally falsified the SF 86 by failing to divulge the 2005 and 2014 DUI and DWI charges and his felony burglary charge in 1999 when he was 14 years old. AG ¶ 16(a) is not applicable to those omissions. I am convinced by substantial evidence that he intentionally falsified the SF 86 by failing to divulge the 2021 charges. However, had he divulged those charges under the previous questions alleged in SOR ¶ 2.a, he would not have been required to divulge then under this question. The security concerns raised by the falsification of the 2021 SF 86 are sufficiently addressed under SOR ¶ 2.a. SOR ¶ 2.b is concluded for Applicant.

SOR ¶ 2.c

Applicant intentionally provided false information on his 2015 SF 86 when he failed to report his 2014 DWI charge. AG ¶ 16(a) is applicable to that omission. SOR ¶ 2.c also alleges that he intentionally falsified the 2015 SF 86 when he failed to report the 2005 DUI charge and his felony burglary charge in 1999. There is insufficient evidence for a finding that those were intentional omissions. AG ¶ 16(b) is not applicable to that language.

SOR ¶ 2.d

SOR ¶ 2.d alleges that Applicant failed to timely disclose, as required, his January 2021 arrest to his employer. This allegation was not established by substantial evidence. SOR ¶ 2.d is concluded for Applicant.

SOR ¶ 2.e

SOR ¶ 2.e alleges that Applicant provided materially false information in response to a DoD interrogatory when he stated that his firearm “misfired.” He wrote in his non-judicial confession he shot the truck because he was upset. I find he intentionally lied in the interrogatory response when he stated that the shotgun “misfired.” AG ¶ 16(b) is applicable to that matter.

SOR ¶ 2.h

SOR ¶ 2.h alleges that Applicant intentionally falsified the 2002 security clearance application when he failed to report that in 1999, when he was about 14 years old, he was charged with felony burglary, graffiti, and criminal mischief. I am not convinced by substantial evidence that Applicant intentionally falsified the 2002 security clearance application by failing to divulge that information. AG ¶ 16(a) is not applicable to that matter. SOR ¶ 2.h is concluded for Applicant.

SOR ¶¶ 2.f, 2.g, and 2.i-2.m

Applicant’s criminal conduct as a juvenile and while in the military, and his three post-military arrests were cross-alleged as personal conduct. His conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant’s conduct is sufficient for an adverse determination under the criminal conduct and alcohol consumption guidelines. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant's criminal conduct in 1999 and 2000 occurred when he was about 14 and 15 years old. That conduct no longer has any security significance. SOR ¶¶ 2.f and 2.g are concluded for Applicant.

The remaining criminal conduct security concerns, as cross-alleged under personal conduct, are not mitigated under the same analyses addressed above under Guidelines G and J. Additionally, having determined that Applicant intentionally provided false information in an attempt to mislead the government, I have also determined that his testimony about those statements was also false. It would be inconsistent to find his conduct mitigated.¹

¹ See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E, G, and J in my whole-person analysis. I also considered Applicant's military service and his favorable character evidence. However, he has multiple alcohol-related offenses, he remains under the supervision of the state, and he cannot be trusted to tell the truth.

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 security concerns under Guidelines E, G, and J.

Formal Findings

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

Paragraph 1, Guideline J:	Against Applicant
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	Against Applicant (except the language about the 2005 DUI and the 1999 burglary, which are found For Applicant)

Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraphs 2.f-2.h:	For Applicant
Subparagraphs 2.i-2.m:	Against Applicant
Paragraph 3, Guideline G:	Against Applicant
Subparagraphs 3.a-3.b:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge