



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 06-10859
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: James F. Campbell, Esquire

May 26, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant was denied a security clearance in 2005 based on personal conduct concerns. He engaged in multiple incidents of similar conduct, some alcohol-related, during the ensuing three years. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the case file, pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on September 6, 2007.¹ On August 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

¹GE 1. Applicant held a security clearance from June 1985 to March 2005, when his clearance was denied after a hearing before a different administrative judge as discussed below. The Appeal Board affirmed that adverse decision. ISCR Case No. 03-08475 (App. Bd. Sept. 14, 2005).

(Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 8, 2009. He answered the SOR in writing (AR) on September 28, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 19, 2009, and the case was assigned to a different administrative judge on the following day. DOHA issued a Notice of Hearing on November 17, 2009, setting the hearing for December 10, 2009. On December 3, 2009, that administrative judge granted Applicant's motion for a continuance until the week of January 18, 2010. On December 23, 2009, DOHA reassigned the case to me. DOHA issued a revised Notice of Hearing on December 24, 2009, and I convened the hearing as scheduled on January 19, 2010. The Government offered exhibits (GE) 1 through 15, which were admitted without objection. Applicant offered exhibits (AE) A through E, which were also admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 27, 2010.

Findings of Fact

Applicant is a 48-year-old employee of a major defense contractor, where he began working in March 2002. He has no military service. He held a security clearance from June 1985 to February 2002 while working for a different major defense contractor, and the clearance transferred with him when he changed jobs. He is single with no children.² In his response to the SOR, he formally admitted the factual allegations set forth in SOR ¶¶ 1.a through 1.g, 2.d through 2.j, and 2.l, with some explanations. He denied the remaining SOR allegations, also with explanations. Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

DOHA issued a previous SOR to Applicant, which also cited security concerns under Guidelines G and E, on May 6, 2004.⁴ After a hearing, a different administrative judge found for Applicant on the Guideline G allegations, because the alcohol-related incidents had occurred several years earlier, there was no indication of a recent problem, and Applicant had successfully completed an alcohol-rehabilitation program. However, the administrative judge found against Applicant on the Guideline E allegations, because his pattern of numerous violations of state traffic codes indicated a flagrant disregard for the law and suggested an unwillingness to comply with rules and regulations. Furthermore, he concluded that Applicant deliberately omitted and concealed relevant and material facts concerning his October 1998 alcohol-related

²GE 1.

³GE 15.

⁴The allegations set forth in the present SOR ¶¶ 1.a (but with an Oct. 2002 end date), 1.e, 1.f, 1.g, 2.a, 2.d, 2.e, 2.f, 2.g, 2.h, 2.i, and 2.j, were all included in the May 6, 2004 SOR.

arrest and criminal charge from his November 1999 security clearance application. The administrative judge found that Applicant had failed to meet his burden to mitigate the resulting personal conduct security concerns and denied his eligibility to continue holding a security clearance.⁵ Applicant appealed this adverse decision, which the Appeal Board affirmed on September 14, 2005.⁶ The findings and conclusions of the administrative judge who decided that case are not binding precedent. After thorough review of that hearing transcript (GE 14), Applicant's response to that SOR (GE 12), and the other exhibits pertinent to the allegations contained therein (GE 2 through 10), I find that the Findings of Fact set forth in the administrative judge's decision (GE 11) are fully supported by the evidence, and they are adopted and incorporated herein by reference. I will draw independent conclusions by applying applicable AG and whole-person factors to the complete and updated facts and circumstances established by all the evidence.

In October 1998, Applicant was arrested for Driving Under the Influence (DUI). He had been at a bar drinking and commiserating with a friend after breaking up with his girlfriend. He was very intoxicated, so his friend drove Applicant's car when they left the bar. They had an accident, and the friend left the site to find a tow truck. Applicant remained with the car, and was arrested when police responded. His blood alcohol content (BAC) was .24%. After he was formally charged with this offense, his friend told the prosecutor that he, not Applicant, had been the driver on the evening in question. The DUI charge was subsequently dismissed without trial.⁷

Between August 1998 and October 2000, Applicant was cited seven different times for the traffic violations as set forth in SOR ¶¶ 2.d through 2.j. He admitted committing all of those offenses, except the Driving While License Suspended offense in SOR ¶ 1.h. The court later determined that Applicant's license had been suspended in error for non-payment of an earlier fine that he had actually paid on time.⁸

On July 21, 2001, Applicant was stopped for speeding while driving home from a bar. He failed a field sobriety test, and a portable breath registered his BAC at .191%. He was arrested and charged with DUI. From August 19, 2001, to February 14, 2002, he successfully completed an alcohol treatment program for a diagnosed condition of Alcohol Abuse. In February 2002, pursuant to a plea agreement, Applicant plead guilty to the lesser charge of Negligent Driving First Degree, and was sentenced as described in SOR ¶ 1.e.⁹

⁵GE 11. This decision, ISCR Case No. 03-08475, was dated March 2, 2005.

⁶See Note 1, *supra*.

⁷GE 11; Tr. 39, 123.

⁸AR; GE 3; GE 4; AE C; Tr. 46-47.

⁹AR; GE 5; GE 6; GE 7; GE 8; GE 9; GE 11; GE 12; GE 14; Tr. 123-124.

On December 26, 2005, Applicant was cited for speeding in Nebraska, vice California as originally alleged in SOR ¶ 1.k. This violation occurred when he entered a construction zone and failed to notice the reduced speed limit. I granted Department Counsel's motion to amend the SOR to conform to the evidence by correcting the name of the state.¹⁰

On December 29, 2006, Applicant began a trip to visit Canada for the New Year's holiday. The previous day he had hosted a party at his house, at which he had one cooler with beer and another with soft drinks. He brought the soft drink cooler with him on the trip, setting it on the front passenger seat. He was stopped twice, a few hours apart, and cited for speeding. During the second stop, the police officer searched his car and found an empty beer can in the soft drink cooler. Applicant was also cited and fined for an open alcohol container violation, despite his claim that he did not know the can was in the cooler.¹¹

On December 30, 2006, Applicant stopped to visit a friend who lived near the border before crossing into Canada. They had a meal, at which Applicant drank several beers, but cannot recall how many. When crossing the border, Applicant was directed by Canadian authorities to pull his car over for inspection but failed to do so. He was stopped and arrested at 6:30 p.m. He told the arresting officer that he had consumed one 12 ounce can of Budweiser beer at approximately 4:00 p.m. in a city about 120 miles south of the border. At 10:11 p.m., and again at 10:49 p.m., his BAC test results were 110 and 120 mg/ml (equivalent to .110% and .120%), respectively. He was charged with DUI, and released on foot on the U.S. side of the border. He walked to a local hotel, where he spent the night and recovered his car the following day. Due to technical flaws in the timing of the breath tests, Applicant's Canadian attorney convinced the prosecutor not to file formal charges in the matter and he was not prosecuted.¹²

On February 16, 2008, Applicant went on a lunchtime wine-tasting date. He does not recall how much he drank. After he felt that he had waited long enough to safely drive, he did so. At 9:24 p.m. he was on a highway and saw a disabled car stopped in his lane ahead of him. Other cars ahead of him merged left and passed the car, but he was unable to do so. He stopped just short of the disabled car. A local police officer who was driving his police car behind Applicant was unable to stop and collided with the rear of Applicant's car. A state police trooper responded to the accident scene. He reported detecting a moderate odor of alcohol on Applicant's breath, and that Applicant performed poorly on the field sobriety tests. Applicant provided two preliminary alcohol screening device breath samples, both of which registered .068%. Applicant informed the responding officer that he had taken a two-hour nap from 5:00 to 7:00 p.m., that his

¹⁰AR; AE C; Tr. 47-49, 58-59, 92-93.

¹¹AR; GE 15; Tr. 34-35, 94-101. I granted Department Counsel's motion to amend SOR ¶ 2.l to conform to the evidence by inserting the word "twice" between the words "cited" and "on."

¹²AR; GE 15; Tr. 35-36, 81-84, 88-90, 117-121.

last meal was a sausage and cheese sandwich with chips at noon, and that his drinking consisted of one Budweiser beer that he drank at home beginning at 12:30 p.m. and ending at 4:59 p.m. that afternoon. Applicant was arrested at 10:09 p.m., and taken to a hospital to provide a blood sample. The subsequent testing of this blood sample revealed a blood alcohol content of .05. Under applicable state law, a reading greater than .08 is an offense, while there is a presumption that one is not under the influence for a reading of .05 or below. State law further provides a one-year statute of limitations within which misdemeanor charges must be formally filed, and that any misdemeanor arrest that does not result in formal charges shall be considered only a detention, rather than an arrest. Applicant was never charged in connection with this incident, and the police report found the accident to have been the fault of the local police officer, not Applicant.¹³

Applicant admitted consuming alcohol, at times to excess and to the point of intoxication or impairment, from approximately 1977 to at least February 16, 2008. He testified that his last alcohol consumption was in June 2008, when he drank what he mistakenly believed to be a non-alcoholic beer at a party. He told an investigator during an August 2008 interview that he last drank when he had two beers at a party at a friend's house. He was diagnosed as diabetic in February 2006, and said he did not consume alcohol from then until December of that year, shortly before he was arrested while crossing into Canada. Applicant testified that he consumed no alcohol after that incident until the day of his February 2008 accident.¹⁴

In preparation for his 2004 security clearance hearing, Applicant obtained an alcohol abuse evaluation from a clinical psychologist recommended by the attorney who represented him at that hearing. He met with this psychologist twice, on September 3, and 4, 2004. The psychologist found that Applicant's "history of substance use/abuse is 'within normal limits.'" He wrote, "negative experiences with alcohol have already led to changes in his use patterns in that he no longer consumes alcohol away from home, even when dining out, because he does not wish to impair his judgment." He concluded that he did not believe Applicant "possesses any more than the 'normal' risk for alcohol abuse and is at very little risk for alcohol dependence." Applicant did not receive any counseling or other type of treatment from this psychologist.¹⁵

When completing his 2007 security clearance application, Applicant duly listed all of the foregoing arrests, including the 1998 DUI arrest that he omitted from his 1999 application as discussed above. He also listed his treatment in the alcohol rehabilitation program from August 2001 to February 2002. He did not list the 2004 consultation with the clinical psychologist discussed in the preceding paragraph, however. He explained that he failed to list that consultation because he did not receive any treatment, and the

¹³AR; GE 15; AE A; AE B; Tr. 28-33, 54-55, 63-81. I modified the allegation in SOR ¶ 1.b to conform to the facts.

¹⁴AR; GE 15; Tr. 57-58, 62-63, 85-88.

¹⁵GE 10.

matter had been fully disclosed during his previous security clearance hearing when he introduced the evaluation report into evidence. Applicant's testimony on this point was completely credible. His explanation is understandable given the wording of the second part of the question asking the applicant to "provide the dates of treatment." There is no evidence from which it is reasonable to infer that this particular omission was a deliberate falsification.¹⁶

Applicant denied the allegation, in SOR ¶ 2.m, that he was cited and fined for speeding on January 29, 2008, and testified that this did not happen. The extracts of his state driving record contain no reference to any such incident. Department Counsel conceded that he had no evidence to prove the allegation, and was unaware of the basis on which the drafter of the SOR included it.¹⁷

Applicant submitted his performance evaluations for the past six years. His overall ratings reflect "Successful Contributor" for five of those years and "High Contributor" for 2007. These evaluations further discussed his personal and technical strengths and areas for development or improvement.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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.

¹⁶AR; GE 1; GE 11; Tr. 42-46, 60-61, 124.

¹⁷AR; AE B; Tr. 49, 125-126.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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. The DCs supported by the SOR allegations and asserted by Department Counsel are:

(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 whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol treatment program.

Applicant's alcohol-related incidents in 1998 and 2001 involved BAC readings of .24% and .191%, both of which indicate significant intoxication. A friend later claimed to have been driving Applicant's car during the first incident, permitting him to avoid criminal prosecution for DUI. He admitted driving during the second incident, after which he completed a six-month alcohol treatment program for his diagnosed Alcohol Abuse. He avoided further incidents prior to his 2004 security clearance hearing, and hired a psychologist who provided an evaluation opining that Applicant had learned from his earlier mistakes and future alcohol abuse was unlikely. Applicant claims to have severely curtailed his alcohol consumption after his February 2006 diagnosis as a diabetic. On December 29, 2006, he was cited for an open-container violation for which he paid a fine rather than contest the ticket, despite his claim of ignorance that the beer can was in his cooler. On December 30, 2006, he consumed what he told the arresting officer was one beer several hours earlier, and what he testified during the hearing was a few beers at a friend's house with dinner. He was sufficiently intoxicated while driving through the Canadian border control that he failed to comply with directions to pull over for inspection, and was arrested. He had enough alcohol in his system to test at the equivalent of .11% three hours and forty-five minutes after his arrest, and .12% a half hour later. In February 2008, after an accident that was not his fault, his preliminary BAC tested at .68%, with a subsequent blood alcohol level tested at .05. This occurred at 9:24 p.m., after his consumption of what must have been a substantial amount of wine around seven to eight hours earlier on a lunchtime wine-tasting date. These facts clearly raise security concerns under AG ¶¶ 22(a) and (f). He also admitted to consuming alcohol, at times to excess and to the point of intoxication or impairment from 1977 to February 2008, supporting application of AG ¶ 22(c).

AG ¶ 23 provides conditions that could mitigate alcohol consumption 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 good judgment;
- (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as

participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant has been involved in multiple alcohol-related incidents over the past 12 years, the most recent of which was about two years ago. None of these occurred under unusual circumstances. His clinical psychologist's 2004 opinion that he had learned from earlier mistakes, and such incidents were unlikely to recur, was disproved by his subsequent conduct. He provided insufficient evidence to support such a conclusion at this point. Accordingly, AG ¶ 23(a) does not provide mitigation.

Applicant says he has not consumed alcohol since June 2008, and consistently minimizes rather than acknowledges his issues of alcohol abuse. His 2006 and 2008 alcohol-related incidents preclude a finding of a pattern of responsible use since his 2001 treatment program. Insufficient time has passed to establish mitigation under AG ¶ 23(b), given the duration and nature of his history of alcohol abuse. Similarly, there is not sufficient evidence to support mitigation under AG ¶¶ 23(c) and (d). Applicant had several relapses after his six-month alcohol treatment program, and demonstrated no participation in counseling or treatment since then. He provided no current favorable prognosis by a duly qualified medical professional or social worker.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes the DCs under this guideline. The specific Guideline E concerns raised by the SOR allegation as asserted by Department Counsel are:

(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

(d) 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 person may not properly safeguard protected information.

Also raised are the judgment, reliability, and trustworthiness issues the Appeal Board found to be inherent under AG ¶ 15. ISCR Case No. 06-20964 (App. Bd. Apr. 10, 2008).

Applicant is an educated man with sufficient experience in the criminal justice system to have understood that he was charged with DUI in 1998, although that charge was later dismissed. If he thought the dismissal of the charge eliminated his need to disclose the incident in response to question 24¹⁸ on his 1999 security clearance application, he should have reported the arrest in response to question 26¹⁹ on that form. His negative response to both of those questions together constituted a deliberate omission and concealment of relevant facts on that application, raising AG ¶ 16(a). His omission of the psychologist's alcohol abuse evaluation from his 2007 questionnaire was not a deliberate omission or concealment of that information. He received no treatment in connection with those consultations, and the results were introduced as evidence on his behalf in his prior DOHA hearing.

Guideline E has been revised since Applicant's last DOHA hearing, but Appeal Board precedent (cited above) establishes that a pattern of behavior demonstrating questionable judgment and unwillingness to comply with rules and regulations will support security concerns under the guideline despite the language that would seem to limit application of particular DCs to cases in which other guidelines are inapplicable. Applicant was denied a security clearance in 2005 due to the falsification noted above, and his pattern of unlawful behavior involving traffic violations. The previous judge noted, "Applicant engaged in numerous violations of the state traffic code. Many were similar or repeated violations, indicating a flagrant disregard for the law. . . . While any one offense, standing alone, is relatively minor, the pattern of these offenses suggests an unwillingness to comply with rules and regulations."²⁰ Since that decision, Applicant was cited and fined for three additional speeding violations, an open container violation, and committed at least one DUI (although Canadian authorities declined to prosecute). This ongoing pattern supports continuing security concerns under AG ¶¶ 15 and 16(d).

These acts adequately raise concerns about his judgment, trustworthiness, reliability, and willingness to comply with rules and regulations, and shift the burden to him to establish mitigation. Additional whole-person analysis will be discussed in the following section.

AG ¶ 17 provides personal conduct MCs. The only MCs with potential applicability to the foregoing security concerns are:

¹⁸asking if he had ever been charged with or convicted of an alcohol-related offense.

¹⁹asking about any arrests or charges in the last 7 years not reported in response to questions 21 to 25.

²⁰GE 11 at 7.

(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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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 caused 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.

Mitigation under AG ¶ 17(a) was not established because Applicant did not disclose his 1998 arrest until confronted with information obtained by the investigator during his subsequent interview. He offered no evidence that would support application of AG ¶ 17(b). Partial mitigation under AG ¶ 17(c) was established, since the omission was more than ten years ago, and he fully disclosed his criminal history on his 2007 application. Standing alone, this concealment in 1999 would not support current concerns. However, considered in connection with his pattern of other violations, it continues to support some doubt about his trustworthiness and judgment. The only counseling Applicant obtained was his 2001 and 2002 treatment for alcohol abuse, after which he resumed drinking and suffered multiple relapses. AG ¶ 17(d) was not established. Applicant did not demonstrate positive steps to reduce or eliminate his vulnerability to exploitation, manipulation or duress. AG ¶ 17(e) was therefore not established.

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 pertinent facts and circumstances surrounding this case. Applicant's conduct of security concern spans the past twelve years. Multiple incidents similar to those that caused his clearance to be denied in 2005 occurred in the three years following that decision. This demonstrates the likelihood of continuation or recurrence of irresponsible conduct and the ongoing potential for exploitation or duress. Although the last incident alleged against Applicant took place two years ago, his repeated misconduct after losing his clearance for similar reasons demonstrates the absence of rehabilitation or other permanent behavioral changes. Applicant has been a well-educated, fully mature, and accountable adult throughout the period in question, and he voluntarily chose to engage in the conduct of concern.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his 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 G:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a or 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraphs 2.d through 2.l:	Against Applicant
Subparagraph 2.m:	For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge