



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



In the matter of: )  
)  
) ISCR Case No. 12-08675  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

04/01/2013

**Decision**

DUFFY, James F., Administrative Judge:

Applicant refuted the Guideline E (Personal Conduct) allegations, but failed to refute or mitigate the Guideline G (Alcohol Consumption) allegations. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 16, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G and E. This action was taken under Executive Order (EO) 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 (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

On December 12, 2012, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 28, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 6, 2013, and the hearing

was held as scheduled on February 27, 2013. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4. Applicant testified, called one witness to testify on his behalf, and offered Applicant's Exhibits (AE) A through F. The record was held open for Applicant to submit additional information. He submitted three emails with attachments that have been marked as AE G through L. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 8, 2013.

### **Procedural Matters**

At the hearing, Department Counsel withdrew the allegation in SOR ¶ 2.a.<sup>1</sup>

### **Findings of Facts**

Applicant is a 59-year-old employee of a defense contractor. He started working for his current employer in July 2012. He has earned two master's degrees. He enlisted in the U.S. Navy in June 1971, attained the grade of petty officer second class (E-5), and received an honorable discharge in July 1975. He served on active duty in the U.S. Army as a helicopter pilot from October 1976 to May 2001 and retired in the grade of lieutenant colonel (O-5). He has been married twice. His first marriage ended in divorce. He and his second wife are separated and have filed for divorce. He has one adult child and four adult stepchildren. He held a security clearance for about 40 years without incident.<sup>2</sup>

The SOR contained fourteen Guideline G allegations. These allegations asserted that Applicant consumed alcohol, at times to excess or to the point of intoxication, from 1971 to at least April 2012 (SOR ¶ 1.a); that he was charged or cited for alcohol-related offenses on eight occasions (SOR ¶¶ 1.b, 1.c, 1.e, 1.i, 1.j, 1.k, 1.l, and 1.m); that an employer took adverse action against him twice for alcohol-related incidents (SOR ¶¶ 1.f and 1.g); and that he received alcohol counseling or treatment on four occasions (SOR ¶¶ 1.b, 1.d, 1.h, and 1.n). Under Guideline E, the SOR alleged that he deliberately falsified his responses to two questions on his Electronic Questionnaire for Investigations Processing (e-QIP) dated July 11, 2011 (SOR ¶¶ 2.b and 2.c). In his Answer to the SOR, Applicant admitted to all or part of each Guideline G allegation and denied both falsification allegations. His admissions are incorporated as findings of fact.<sup>3</sup>

Applicant has a long and troubled history with alcohol. He started consuming alcohol at age 17 after enlisting in the Navy. He indicated that he would consume a six-pack of beer two or three times a week at base clubs or in the barracks. He became intoxicated frequently. He continued his heavy consumption of alcohol while in the

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<sup>1</sup> Tr. 12.

<sup>2</sup> Tr. 7, 15-16, 34-37, 87-93; GE 1; AE B.

<sup>3</sup> Tr. 10-11; Applicant's Answer to the SOR.

Army. In the mid-1990's, he started consuming whiskey on a regular basis. He testified that alcohol never negatively impacted his work performance in the military.<sup>4</sup>

In April 2002, Applicant pushed his wife while he was intoxicated. She was not injured, but called the police. He was arrested and charged with a domestic violence offense, which was later dismissed. He underwent an evaluation at the Social Treatment Opportunity Program (STOP) that disclosed he may have an alcohol problem. In August 2002, he was arrested and charged with driving under the influence (DUI) of alcohol with a blood alcohol content of .20% or above. The court deferred his sentence on the DUI charge and ordered him to participate in STOP for two years. The STOP program involved hour-long sessions once a week. While participating in that program, he was diagnosed as alcohol dependent. He indicated that he stayed sober for about a year and a half while in that program, but began consuming alcohol again, believing he could manage his drinking. His consumption of alcohol, however, slowly increased.<sup>5</sup>

In January 2004, Applicant was in the parking lot of a video store after he had been drinking. A truck drove by him very close; almost hitting him. He shouted at the truck. It turned around and returned to his location. Three young males were in the truck. Applicant claimed they threatened him, and he kicked the door of the truck causing about \$1,400 in damage. The three males remained in the truck and called the police. The police arrested Applicant and charged him with malicious mischief. That charge was dismissed when he agreed to pay the damages.<sup>6</sup>

About eight years ago, Applicant's daily consumption of alcohol at home escalated to about six beers or about six shots of whiskey. During this period, he indicated that he became intoxicated almost daily. In his testimony, he acknowledged that his consumption of alcohol at times constituted habitual or binge drinking. While working for Company D in July 2008, he went on a business trip to a major military installation. His work ended there on a Friday. Over that weekend, he visited with his son in another city. He went to the airport on Sunday and learned his return flight was delayed. While waiting at the airport, he consumed about seven or eight mixed drinks. The police arrested him there for public intoxication. He pled guilty to that charge and was fined about \$200. His company received a report of the airport incident, but did not know the identity of the employee involved. When his supervisor confronted him about the airport incident some time later, Applicant admitted his involvement. In September 2008, his supervisor issued him a written reprimand for the airport incident because that misconduct occurred on the return leg of a business trip. In February 2009, Company D

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<sup>4</sup> Tr. 33-39; GE 3.

<sup>5</sup> Tr. 39-40, 104-109, 115-120, 124, 127-129; GE 3.

<sup>6</sup> Tr. 116-120; GE 3. This incident was not alleged in the SOR. Non-alleged misconduct will not be considered in applying the disqualifying conditions, but may be considered in applying the mitigating conditions and in making a whole-person assessment.

terminated his employment because he brought beer into the workplace in violation of company rules. He indicated that he did not consume any beer in the workplace.<sup>7</sup>

In April 2009, Applicant began working for another defense contractor, Company W. In April 2010, he went to Company D to meet friends for lunch. Security personnel at Company D notified him that he should not be there. At the time, he was not aware of that restriction and departed. One of the employees at Company D called Applicant's supervisor at Company W and informed him of the airport incident in July 2008. Up to that point, Applicant had never been counseled at Company W about his alcohol consumption, but believed his supervisor's conversation with the Company D employee put concerns in his supervisor's mind. His supervisor confronted him about those concerns. They got into an argument. Applicant stated he told his supervisor that he was quitting. The supervisor fired him the next day. Applicant testified that he was not sure "whether I'd quit or been fired, but I knew it was adverse conditions, no matter how you put it."<sup>8</sup>

In May 2010, Applicant realized that he was an alcoholic and needed help. He checked himself into an inpatient alcohol treatment facility. During his two weeks of inpatient treatment, he was diagnosed again as alcohol dependent. He received follow-on outpatient counseling and treatment from May to August 2010. He abstained from alcohol for about six months after that treatment, but then started to consume alcohol again.<sup>9</sup>

In November 2011, Applicant and his second wife filed for divorce. He agreed to give her their home and other property. Around this time, he also became unemployed when his employer told him that he needed to resolve his alcohol problem to continue working. He stated this was an awful time for him. He first lived in a motel, then with friends, and finally out of his vehicle. He was drinking frequently. He described this period as "hitting bottom" and stated that he did not care what happened to him. Between January and March of 2012, he was arrested five times for alcohol-related offenses. While riding as a passenger in a car on January 28, 2012, he was arrested for public intoxication, which resulted in a fine. While sleeping in his parked car in a recreation area on February 6, 2012, he was arrested for DUI, a charge that was later dismissed. On February 15, 2012, he was arrested on federal property and charged with public intoxication, harassment, and disorderly conduct. He was convicted of those offenses in U.S. Magistrate Court, placed on probation, and ordered to participate in a court intervention program that is discussed in more detail below. On March 7, 2012, he was again arrested for DUI while sleeping in his parked car, a charge that was later dismissed. Finally, he was cited for public intoxication on March 12, 2012, pled no contest to that charge, and paid a \$200 fine.<sup>10</sup>

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<sup>7</sup> Tr. 40-44, 95-98, 109-114, 129-131; GE 3.

<sup>8</sup> Tr. 31-33, 40-44, 92-99, 114-115; GE 3.

<sup>9</sup> Tr. 40-44, 114-124; GE 3, 4.

<sup>10</sup> Tr. 44-53, 124-127; GE 3, 4; AE C, D, E. The court records reflecting the dismissal of the two DUI offenses have dates of arrest that do not match the SOR allegations.

The U.S. Magistrate who presided over Applicant's federal offenses in February 2012 wrote a letter stating:

[Applicant] has been on probation since April 16, 2012, in my court based on convictions for public intoxication, harassment, and disorderly conduct. All three charges arose from one event. He was placed on probation for two years and ordered to participate in the Court Intervention Program ("CIP") that I supervise.

To say that [Applicant] has responded well to this program would be an understatement. I have operated this program for a number of years and can honestly say that [Applicant] is the best example I have of how such programs can benefit individuals.

Shortly after entering the program, it became apparent that [Applicant] had come to grips with the fact that he had a problem with alcohol and that he intended to overcome that problem. To that end, he first participated in an in-patient program which he successfully completed. He then entered a follow-up counseling program at an organization known as [P] here in [location]. That program is designed to teach individuals with alcohol and/or substance abuse problems how to deal with them on a day-to-day basis. [Applicant] has participated in this program with no problems.

In fact, [Applicant] has done considerably more than just complete the program. He and another individual took it upon themselves to assist others at [P] as mentors. In addition, they realized that many individuals at [P] needed help with basic life skills. Consequently, they have assisted others by tutoring them to obtain GED [General Education Development] certificates, help them fill out applications for such things as Pell Grants so they could attend school, and assisted them in filling out job applications in order to obtain employment.

[Applicant] did all of this on his own. It was not required of him, but was accomplished solely because of his desire to help others. In my opinion, many people at [P] received valuable assistance they would never have otherwise received or been able to afford.

Likewise, I am convinced that [Applicant] has mastered his problem with alcohol. I have been a lawyer for almost 36 years, including time as an FBI Special Agent, state and federal prosecutor, and 15 years as a judge. Consequently, I am not easily fooled by individuals who want me to believe they have overcome problems when, in fact, they have not. In the case of [Applicant], I am confident as I have ever been that he has overcome his problem and that it will not reoccur. I am sufficiently confident of this that today I terminated his probation over a year early. Despite being completely free of any oversight by me, [Applicant] has

indicated that he intends to continue his mentoring of [P] clientele. This speaks volumes with regard to the kind of person he has become.

I have a tremendous amount of confidence in and respect for [Applicant]. He has demonstrated that he has mastered his problem with alcohol, and I do not believe it will ever be a problem for him again.<sup>11</sup>

Applicant testified that his latest treatment was much more intense than his earlier treatment. His latest treatment consisted of 21 days of inpatient treatment and three months of outpatient treatment at [P]. He lived in a halfway house during the outpatient treatment. Throughout this treatment, he participated in Alcoholics Anonymous (AA), attending almost 400 AA meetings during his outpatient treatment. He has continued to attend AA meetings following his treatment. He has an AA sponsor and also serves as one. He also noted that the spiritual aspect of his recovery, which he cannot quantify, was much different this time. He provided documentation showing that his liver enzymes were eight times the normal level when he was drinking and approaching the point at which his liver would shut down. Since his most recent treatment, his liver enzymes have returned to normal levels. He also stated that he passed 36 urinalysis tests in the past year. He stated the U.S. Magistrate has asked him to mentor individuals with alcohol problems that appear in court and he has agreed to do so.<sup>12</sup>

Applicant's alcohol counselor at [P] testified:

[Applicant] -- basically anything that has been asked of him, he had done it above and beyond. He has never questioned anything that -- anything about our program. He was just there to start a new life and to live a better life.

I'd say after about the first 30 days he was there, he really started showing the desire for change in his life. As most alcoholics and addicts go, that usually don't come so quick. It's a very long-drawn-out process to start a recovery life and to live one.

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[S]ince the time he has [been] discharged from our program, he still comes back every Tuesday night for groups; Thursday night he still comes back, and his GED program that he started has actually turned into a life-skills development program that we implemented at [P].<sup>13</sup>

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<sup>11</sup> AE G, H. On March 4, 2013, the U.S. Magistrate, Applicant, Department Counsel, and I participated in a conference call. During the call, the U.S. Magistrate reiterated the strong feelings he expressed in his letter.

<sup>12</sup> Tr. 52-65, 144-145; GE 4; AE K, L.

<sup>13</sup> Tr. 70-71, 81-83.

The alcohol counselor indicated that the executive director of [P], who was a licensed professional counselor, diagnosed Applicant as being alcohol dependent. Applicant successfully completed the program at [P] on July 26, 2012. The clinical director of [P] submitted a letter stating that Applicant's "prognosis remains excellent as long as he continues as planned."<sup>14</sup>

Applicant testified that the last time he consumed alcohol was on April 4, 2012. His current employer is aware of his alcohol problem and indicated that Applicant is a valued employee whose work performance has been exceptional.<sup>15</sup>

The SOR alleged that Applicant falsified his e-QIP dated July 11, 2011, by deliberately failing to disclose that he was terminated from Company W in April 2010 due to unprofessional behavior and poor performance (SOR ¶ 2.b) and by deliberately failing to disclose his DUI charge in August 2002 (SOR ¶ 2.c).

On February 1, 2005, Applicant submitted a security clearance application (SF-86) in which he disclosed his domestic violence charge of April 6, 2002; DUI charge of August 13, 2002; and malicious mischief charge of January 18, 2004. In his e-QIP of July 11, 2011, he disclosed in Section 13A (employment/unemployment information) that he was "Released by employer" from his job at Company D in April 2009 and from his job at Company W in May 2010. In response to questions in Section 13C (employment record), he disclosed that he was released from Company D under adverse circumstances, but did not list the termination of his employment from Company W in that section. In Section 22, he responded "Yes" to questions that asked whether he had been arrested in the last seven years, whether he had ever been charged with a felony offense, and whether he had ever been charged with any offenses related to alcohol or drugs. In Section 22, he listed his arrest for public intoxication in 2008 and his arrest for malicious mischief in 2002 (which occurred in 2004). In that section, he did not list his DUI arrest/charge in August 2002. A summary of Applicant's Office of Personnel Management (OPM) interview on August 22, 2011, indicated that he "volunteered" information about his August 2002 DUI arrest during that interview. At the hearing, he adamantly denied falsifying responses in his e-QIP and attributed those omissions to oversights.<sup>16</sup>

OPM investigators interviewed Applicant on June 13, 2006, and August 22, 2011. Two different investigators conducted those interviews. Applicant adopted the summaries of both OPM interviews without making any modifications. Of note, there are significant inconsistencies between the statements Applicant reportedly made during those interviews as well as inconsistencies between those statements and his testimony at the hearing. These inconsistencies include:

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<sup>14</sup> Tr. 68-85; GE 4; AE I, J.

<sup>15</sup> Tr. 36-38, 81, 131-132; GE 4; AE B.

<sup>16</sup> Tr. 29-33, 92-104; GE 1, 2, 3.

a. In the June 2006 interview, Applicant reportedly stated that he had not consumed any alcohol since August 2002 (the month of his first DUI arrest), a period of almost four years. The summary of that interview contained a number of similar statements about the length of his abstinence from alcohol before the interview. In the August 2011 interview, however, Applicant reportedly stated that “about eight years ago” (approximately 2003) his daily consumption of alcohol escalated to about six beers or six shot of whiskey, and such consumption continued until May 2010 (the month of his first inpatient alcohol treatment). In his Answer to the SOR, he stated, “I completed a two year alcohol orientation/awareness program as part of the above DUI charge and did not consume alcohol during that period.” The SOR identified the period of that program as August 2002 to August 2004. At the hearing, he testified that he did not drink “for about a year and half” during that period, but then started to drink alcohol occasionally while he was still participating in that alcohol program (STOP).<sup>17</sup>

b. In the June 2006 interview, Applicant reportedly stated that he had not been drinking before the incident in which he kicked the door of the truck in January 2004. At the hearing, however, he testified that he had been drinking before that incident and the young males in the truck probably called him “a drunk old man” or words to that effect.<sup>18</sup>

c. In the August 2011 interview, Applicant reportedly stated that he had not consumed any alcohol since his inpatient treatment in May 2010, a period of about 15 months. At the hearing, he testified initially that he “was able to come out of there [two week inpatient treatment] and stay completely clean for a year, and in the second year I started dabbling in alcohol again.” During cross-examination, he testified that he started to consume alcohol about six months following that treatment.<sup>19</sup>

In the Army, Applicant served in command five times. He flew helicopters for hundreds of hours in combat zones, including in Operation Desert Storm. In at least one assignment in the Army, he was responsible for the unit’s personnel reliability program. He has been awarded two Bronze Stars and a Legion of Merit.<sup>20</sup>

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<sup>17</sup> Tr. at 117-118. See notes 5, 6, and 7 and accompanying text; GE 3 at I-7, I-11, and I-13. It is noted that the summary of the OPM interview in August 2011 appears to have reported incorrectly a period of Applicant’s abstinence from alcohol. Specifically that summary stated, “After retiring from the US Army in 2001, he stopped consuming alcohol of any kind because he thought he might have an alcohol problem. After about two years of not consuming any alcohol the subject started consuming beer again.” From the Applicant’s testimony, it was apparent the OPM investigator may have been referring to his period of abstinence that occurred after his DUI charge in 2002 and during his participation in the STOP program, *i.e.*, August 2002 to August 2004.

<sup>18</sup> See note 6 and accompanying text; GE 3 at I-12

<sup>19</sup> Tr. 43, 120-124. See *also* note 9 and accompanying text; GE 3 at I-7.

<sup>20</sup> Tr. 30, 35-36, 87-92; AE A.



## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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.

The guideline notes several disqualifying conditions that could raise security concerns under AG ¶ 22. Six are potentially applicable in this case:

- (a) alcohol-related incidents away from work, such as driving 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;
- (b) alcohol-related incidents at work, such as reporting for work in an intoxicated or impaired condition, or drinking on the job, 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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; and
- (f) relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program.

Applicant committed alcohol-related misconduct on multiple occasions. An employer twice took adverse action against him for alcohol-related incidents. In 2012, a licensed professional counselor at an alcohol treatment facility diagnosed him as alcohol dependent. He admitted to engaging in habitual and binge drinking. In the past, he received inpatient and outpatient alcohol treatment and relapsed following such treatment. The evidence is sufficient to establish AG ¶¶ 22(a), 22(b), 22(c), 22(e), and 22(f).

Three alcohol consumption mitigating conditions under AG ¶ 23 are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur or does not cast doubt on the individual's 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); 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 health professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's alcohol abuse and his alcohol-related misconduct occurred recently, repeatedly, and did not happen under unique circumstances. AG ¶ 23(a) does not apply.

Applicant indicated that he last consumed alcohol in April 2012. Since then, he completed 21 days of inpatient treatment that was followed by three months of outpatient treatment in a halfway house. This treatment was much more intense than his previous treatment. As a result of this recent treatment, Applicant has made significant strides in coming to grips with his alcohol problem. He acknowledged his alcohol problem and realized he must change his way of living to conquer it. His alcohol counselor testified that he took a very active role in his recovery while in treatment and is still continuing to do so. Applicant continues to attend AA meetings regularly, still attends weekly group sessions at the outpatient clinic, and has agreed to become a mentor for individuals with alcohol problems in a U.S. Magistrates Court. He has developed a supportive network to assist him in his recovery. The clinical director of the outpatient clinic indicated that Applicant's "prognosis remains excellent as long as he continues as planned."

The U.S. Magistrate's letter is very enlightening. The magistrate is closely connected with the treatment programs that Applicant recently completed. For the past year the magistrate has been monitoring Applicant while he has been on probation. Based on that oversight, the magistrate concluded that Applicant has gone through a major lifestyle change and has mastered his alcohol problem. The magistrate was so impressed by Applicant's recovery that he decided to terminate his probation a year early.

While Applicant's latest recovery appears quite remarkable, sufficient time has not passed to conclude that he has solved his alcohol problem. In the past, he has

relapsed following his successful completion of inpatient and outpatient alcohol treatment. He was released from probation the day before the hearing. The impact of the termination of that oversight on him and his recovery is unknown. His last consumption of alcohol as well as his last alcohol offense occurred less than a year before the hearing. In short, it is too soon to determine that his misuse of alcohol is unlikely to recur.

Furthermore, the inconsistencies between the statements that Applicant made during the OPM interviews as well as inconsistencies between those statements and his testimony at the hearing are troubling. Most importantly, the statements he made during the OPM interviews about the lengths of his periods of abstinence from alcohol before those interviews were false and misleading. Those periods of abstinence were material issues during those interviews. From his military experience, Applicant would have understood the significance of those statements when he made them and would have known those purported periods of abstinence would play a key role in determining his suitability for a security clearance. Applicant's prior inconsistent statements about his alcohol consumption, particularly the lengths of his periods of abstinence before the OPM interviews, have caused me to give less weight to his hearing testimony, especially his testimony about the nature and scope of his latest recovery.

AG ¶ 23(b) and 23(d) partially apply, but do not mitigate the alcohol consumption security concerns in this case.

### **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 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 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification.

An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.<sup>21</sup>

In Section 13A of his e-QIP of July 2011, Applicant noted that he was "released" by Company W, but failed to list that termination in Section 13C. In a security clearance application in 2005, he disclosed his DUI arrest in August 2002. During his OPM interview in August 2011, he "volunteered" information about that DUI arrest; however, he failed to list it in Section 22 of his e-QIP. He plausibly explained that his failure to disclose his termination of employment from Company W in Section 13C and his DUI arrest in Section 22 were due to oversights. I found his explanation believable and conclude that AG ¶ 16(a) is not established. The personal conduct security concerns are concluded in favor of Applicant.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines G and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature adult who has served our country as a military member or defense contractor for over 40 years. During most of that period, he has held a security clearance without incident. He has held positions of responsibility in the military and understands the security clearance process. At the hearing, he has acknowledged his alcohol problem and knows he must abstain from alcohol. While it appears that he has turned a corner in his life and taken the right steps to overcome his alcohol problem,

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<sup>21</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

insufficient time has passed to conclude that problem is behind him. Despite the mitigation that he presented, Applicant's past alcohol consumption remains a security concern at this point.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant refuted the Personal Conduct security concerns, but he failed to refute or mitigate the Alcohol Consumption security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a – 1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	Withdrawn
Subparagraphs 2.b – 2.c:	For Applicant

### **Conclusion**

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

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James F. Duffy  
Administrative Judge