



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 13-00478

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

01/03/2014

**Decision**

HARVEY, Mark, Administrative Judge:

From 1985 to December 2011, Applicant was arrested or cited for five alcohol-related offenses. He was convicted of driving while intoxicated or impaired (DWI) or driving under the influence (DUI) of alcohol in 1985, 2006, and 2012. He is on probation for his most recent DUI. There is no medical diagnosis, evaluation, or prognosis of his alcohol consumption; he continues to consume alcohol; and he is not attending any ongoing alcohol-related counseling or treatment. After his most recent DUI, he made some positive changes in his life; however, more time without alcohol consumption and criminal conduct is necessary before alcohol consumption and criminal conduct concerns will be fully mitigated. Personal conduct concerns relating to his completion of two security clearance applications are mitigated because he did not intend to deceive the Government about his alcohol-related criminal arrests, charges, and convictions. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 13, 2006, and September 7, 2012, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance applications (SF 86). (GE 1, 4) On May 28, 2013, the Department of Defense (DOD) Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information*

*Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

The SOR alleged security concerns under Guidelines J (criminal conduct), G (alcohol consumption), and E (personal conduct). (Hearing Exhibit (HE) 2) The SOR further informed Applicant that DOD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be granted, continued, denied, or revoked. (HE 2)

On June 13, 2013, Applicant responded to the SOR. (HE 3) Applicant waived his right to a hearing. On September 16, 2013, Department Counsel generated the File of Relevant Material (FORM). (Tr. 14-15, 18, 20-21; HE 5) On October 11, 2013, Applicant requested a hearing. (Tr. 17; HE 3) On October 30, 2013, Department Counsel indicated he was ready to proceed on Applicant's case. On November 14, 2013 Applicant's case was assigned to me. On November 22, 2013, DOHA issued a hearing notice, setting the hearing for December 6, 2013. (HE 1) Applicant's hearing was held as scheduled. Department Counsel offered 17 exhibits, and Applicant offered one exhibit. (Tr. 33-37; GE 1-17; AE A) There were no objections, and I admitted GE 1-17 and AE A. (Tr. 35, 37) On December 16, 2013, I received the transcript.

## **Procedural Issue**

Two procedural issues were resolved at the outset of the hearing. First, Applicant agreed to a December 6, 2013 hearing date and to waive his right to 15-days of notice of the date, time, and location of his hearing. (Tr. 19-20) Second, SOR ¶ 1.d alleges that on September 30, 1995, Applicant was arrested and charged with operating a motor vehicle while under the influence of alcohol, hit and run, and leaving the scene of an accident. Department Counsel withdrew SOR ¶ 1.d because the allegation was not substantiated. (Tr. 27, 30, 63-64) The portions of SOR ¶¶ 2.a, 3.b, and 3.c, relating to SOR ¶ 1.d are not substantiated and withdrawn. (Tr. 72-73)

## **Findings of Fact<sup>1</sup>**

Applicant admitted the conduct alleged in SOR ¶¶ 1.a to 1.c, and 2.a, and he provided some extenuating and mitigating information. (HE 3) He denied the remaining SOR allegations. His admissions are accepted as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

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<sup>1</sup>The facts in this decision do not specifically describe employment, names of witnesses or locations in order to protect Applicant and his family's privacy. The cited sources contain more specific information.

Applicant is a 59-year-old employee of a defense contractor, who has worked as a chief operating officer for a government contractor providing services to several military installations. (Tr. 6-8, 56) He worked for a government contractor for the last 35 years and held a security clearance intermittently for 25 or 30 years. (Tr. 7, 58) His company will permit him to retain his employment without a security clearance. (Tr. 9) However, a security clearance is required in his current position as he is a key management person. (Tr. 10, 58) His annual salary is approximately \$300,000. (Tr. 95)

In 1972, Applicant graduated from high school. (Tr. 7) He attended college, but did not receive a degree. (Tr. 7, 56) He has never served in the military. (Tr. 59-60) In 1995, he married his spouse. (GE 4) His children were born in 1980 and 1997, and his stepchildren were born in 1979 and 1981. (GE 4)

### **Criminal Offenses and Alcohol Consumption**

On March 28, 1985, Applicant was charged with DUI. (SOR ¶ 1.f) He was convicted and sentenced to 30 days in jail (27 days suspended), a fine, and community service. (Tr. 60) He attended a brief traffic-type class after the DUI. (Tr. 60)

On August 26, 1994, Applicant received a ticket or citation for standing on the street with a beer in his hand. (Tr. 61) The citation was for drinking in public. (SOR ¶ 1.e) He received a fine of about \$25. (Tr. 62)

On December 7, 2005, Applicant was arrested and charged with DWI. (Tr. 66; SOR ¶ 1.c) On May 10, 2006, he pleaded guilty, and was sentenced to one year of unsupervised probation, a 3-day class, costs, and a fine. (Tr. 69, 73-74) His lawyer told Applicant that the conviction would be taken off of his record. (Tr. 69)

On December 14, 2008, Applicant was drinking alcohol earlier in the evening. (Tr. 76) He made an illegal u-turn, and he was going the wrong way on a one-way street. (Tr. 75) The police arrested him, and he was charged with DUI. (Tr. 75; SOR ¶ 1.b) The charge was reduced to reckless driving. (Tr. 77) He was placed on informal probation for one year. (Tr. 78)

On December 20, 2011, Applicant drank five to seven, but less than a dozen, 12 ounce beers over about a three-hour period. (Tr. 104-105) The police stopped Applicant because he was driving with a headlight out. (Tr. 80) The police arrested him and charged him with DUI. (Tr. 79-80; SOR ¶ 1.a) His blood alcohol content (BAC) tested at .178. (Tr. 104) In October 2012, Applicant was found guilty and sentenced to five years of information probation, a \$6,000 fine (\$3,000 suspended), and 60 days in jail (55 days suspended), among other punishments. (Tr. 86; GE 16) He is currently on probation; however, he is not required to report to a probation officer. (Tr. 87, 101) Applicant was required to attend an extensive 19-week outpatient alcohol-treatment program. (Tr. 80; SOR response at 9) During the treatment program, he complied with the program's request that he not consume alcohol. (Tr. 83) He resumed his alcohol consumption after about six months around April 2013. (Tr. 84) He also attended one year of aftercare.

(Tr. 80; SOR response at 10-11) His driver's license was suspended for six months, and then an interlock device was placed on his car for the next six months. (Tr. 80)

Applicant attended 19 Alcoholics Anonymous (AA) meetings from January 9, 2012 to March 4, 2012, as required by his aftercare program. (Tr. 102) He does not attend AA meetings or receive any other ongoing alcohol-related therapy. (Tr. 87-88) He met with a medical professional about his alcohol consumption for about 30 minutes. (Tr. 82) He did not receive a diagnosis or prognosis. (Tr. 82-83, 103) He continues to consume alcohol, but at a lesser level than before his December 20, 2011 DUI. (Tr. 85, 103) He limits his alcohol consumption to two drinks during an evening. (Tr. 86) He does not drive after consuming alcohol. (Tr. 85) He was sorry for some of the decisions he made, and he assured that the offenses would not occur in the future. (Tr. 96-97)

## **Personal Conduct**

Applicant told his FSO about the DWI arrest the next day after his December 7, 2005 DWI arrest. (Tr. 69, 99) When Applicant completed his July 13, 2006 SF 86, he was asked whether he had ever been charged with an offense involving alcohol and drugs. (SOR ¶ 3.d) He responded, yes, and he disclosed his December 2005 DWI arrest. (Tr. 70; SOR ¶ 1.c) He did not disclose his citation for drinking in public citation in 1994 because he did not consider it an arrest. (Tr. 71) He did not report the 1985 DUI because he thought he was only required to report arrests in the last seven years. (Tr. 71-72) He did not intentionally attempt to conceal information from security officials. (Tr. 72) He expressed regret and remorse for his carelessness in the omission of complete information on his July 13, 2006 SF 86.

Ms. D, Applicant's facility security officer (FSO) stated that she was aware of Applicant's DUIs in 2005 and 2008 because Applicant disclosed them to her shortly after his arrests. (Tr. 43, 48-50) After he had the 2011 DUI, Applicant discussed it with Ms. D, and she told him to disclose it to his FSO. (Tr. 51) Over the years, there were some changes in the format and content of the questions on the SF 86, which caused confusion. (Tr. 43) Some people have answered questions for seven years instead of recognizing that the question sought all of the information about drug or alcohol arrests, regardless of how long ago the drug or alcohol offense occurred. (Tr. 44)

When Applicant completed his September 7, 2012 SF 86, he was asked three relevant questions in sections 22 and 24 as follows: (1) "In the past seven (7) years have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer?" (SOR ¶ 2.a); (2) "Other than those offenses already listed, have you EVER had the following happen to you? . . . Have you EVER been charged with an offense involving alcohol or drugs?" (SOR ¶ 2.b); and (3) "In the last 7 years has your use of alcohol . . . resulted in intervention by law enforcement/public safety personnel?" (SOR ¶ 2.c) Applicant responded, yes, to the first question and disclosed his 2011 DUI arrest; however, he did not disclose his other alcohol-related arrests in 1985, 2005, and 2008. (Tr. 89; GE 4)

In regard to Applicant's September 7, 2012 SF 86, he did not report the December 7, 2005 arrest because he thought it was outside the seven-year requirement, even though it was actually within seven years. (Tr. 90) He did not report the 2008 DUI arrest because he believed it was really a reckless driving case. (Tr. 90) He did not have records concerning his arrests or consult with his FSO when he completed his SF 86. (Tr. 94-95) He also thought the Government knew about the arrest already because whenever Applicant had an alcohol-related incident, he notified his FSO. (Tr. 30, 108) The Office of Personnel Management (OPM) investigator, who interviewed Applicant on December 14, 2012, was aware of his 2008 DUI arrest. (Tr. 108; GE 17) Applicant acknowledged he did not read the questions carefully; he mistakenly failed to provide the requested information on his SF 86; and it was not his intention to deceive the Government about his alcohol-related offenses. (Tr. 31, 91) He promised that he would be more careful and scrupulously accurate in the completion of his security documents. (Tr. 97)

### **Character Evidence**

Ms. D was the Director of Security and Corporate Facility Security Officer for Applicant's company from 2005 to 2010. She has 29 years of security experience, including more than 20 years as a Special Agent of the Defense Security Service and eight years working for Applicant's company. (Tr. 40, 46, 50) Applicant is very supportive and conscientious about security issues. (Tr. 45) He did not commit any security violations, and there were never any allegations questioning his moral character, integrity, or honesty. (Tr. 45, 54) Applicant is fair, honest, and forthright. (Tr. 53)

Applicant's Chief Executive Officer has known him for more than 12 years. (AE A) Applicant has good character and sound judgment. "He performs his duties in an exemplary fashion and has become integral to the success of the company. . . . He has my trust and support. . . ." (AE A)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are

applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Nothing in this decision should be construed to suggest that I based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Alcohol Consumption**

AG ¶ 21 articulates the Government's concern about alcohol consumption, "[e]xcessive 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."

Four Alcohol Consumption disqualifying conditions under AG ¶ 22 could raise a security or trustworthiness concern and may be disqualifying in this case. Those four disqualifying conditions as alleged in the SOR provide:

- (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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and
- (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.

AG ¶¶ 22(d) and 22(e) do not apply. There was no diagnosis or evaluation of Applicant's consumption of alcohol. Applicant engaged in binge-alcohol consumption to the extent of impaired judgment on December 20, 2011, when he consumed sufficient alcohol to have a BAC of .178, and was arrested for DUI.<sup>2</sup> His alcohol consumption or involvement from 1985 to December 2011 resulted in four arrests and one citation. He was convicted of DWI or DUI three times in 1985, 2006, and 2012. He is on probation for his most recent DUI. AG ¶ 22(a), 22(c), and 22(d) apply.

Four Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a)-23(d) 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 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);

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<sup>2</sup>Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. See U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), <http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf>.

(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.

AG ¶ 23(a) to 23(d) partially apply. Three of Applicant's five alcohol-related arrests or citations were between 1985 and 1995. Those three alcohol-related offenses are too temporally remote to have significant security significance other than to show his lengthy history of alcohol-related offenses. Applicant had no alcohol-related involvement with the police or courts until 2005, a period of 10 years. He had two alcohol-related DWI or DUI convictions in 2006 and 2012. He attended and successfully completed an intensive outpatient program after his December 2011 DUI, including aftercare, and was able to refrain from alcohol consumption for six months. However, in April 2013, he resumed his alcohol consumption; there is no medical diagnosis or evaluation of his alcohol consumption; and he is not attending any ongoing alcohol-relating counseling or treatment. He has not attended any intensive, inpatient alcohol rehabilitation or counseling program.

Applicant described some alcohol-related counseling and attendance at 19 AA meetings from January 9, 2012 to March 4, 2012; however, he is not currently participating in alcohol-related counseling or treatment. There are no statements from counseling programs positively describing his prognosis.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007). For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge's grant of a clearance and noted, "That Applicant continued to drink even after his second alcohol-related arrest vitiates the Judge's application of MC 3."

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge's grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB's most recent DUI was in 2000, six years before an administrative judge decided AB's case. AB had reduced his



alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB's continued alcohol consumption was not responsible, and the grant of AB's clearance was arbitrary and capricious. See *also* ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge's grant of a clearance).

After careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude his successful completion of an intensive outpatient alcohol counseling and treatment program, his abstinence from alcohol consumption until April 2013, and then his responsible consumption of alcohol thereafter, are not sufficient to establish his alcohol consumption is under control. His alcohol consumption continues to cast doubt on Applicant's "current reliability, trustworthiness, or good judgment." Alcohol consumption concerns are not mitigated.

### **Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes three conditions that could raise a security concern and may be disqualifying in this case, "(a) a single serious crime or multiple lesser offenses," "(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted," and "(d) individual is currently on parole or probation."

AG ¶¶ 31(a), 31(c), and 31(d) apply. From 1985 to December 2011, Applicant was arrested four times and cited once for alcohol-related offenses, including three arrests and convictions for DWI or DUI. His offenses resulted in convictions, fines, and other penalties. He is currently on unsupervised probation.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or

restitution, job training or higher education, good employment record, or constructive community involvement.

Although none of the mitigating conditions fully apply, there are important mitigating factors. The most recent offense occurred on December 20, 2011, and he has not committed any criminal offenses for more than two years. He complied with all the terms of his most ongoing probation. He has been continuously employed for more than 30 years. He expressed regret and remorse concerning his alcohol-related offenses. The comments in the previous section about mitigation of alcohol-consumption concerns are incorporated into this section.

The offense described in SOR ¶ 1.e (drinking in public or possession of an open container of alcohol in public) was a citation and resulted in a \$25 fine. SOR ¶ 1.e is an offense, but is not established to be a **criminal** offense and is mitigated.

Significant factors weighing against mitigating criminal conduct concerns remain. He will remain on probation for several years. The state has determined that the passage of more time under the conditions of probation and without any serious criminal misconduct is necessary to protect society and establish rehabilitation. More time must elapse before there is enough assurance that criminal conduct and other behavior raising security concerns is unlikely to recur. Criminal conduct concerns are not fully mitigated at this time.

## **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 one condition that could raise a security concern and may be disqualifying with respect to Applicant's alleged falsifications of his July 13, 2006, and September 7, 2012, SF 86s, "(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."<sup>3</sup>

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<sup>3</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or

Applicant's statements explaining why he did not provide derogatory information about his alcohol consumption and criminal conduct on his July 13, 2006, and September 7, 2012, SF86s are credible. His omissions and misstatements were errors made through carelessness and oversight. He refuted the allegations that he intentionally falsified his July 13, 2006, and September 7, 2012, SF86s. He regrets his mistakes, and he would not make the same mistakes today. Moreover, he corrected the omission, concealment, or falsification in good faith. When questioned about his alcohol consumption and criminal conduct, he fully and frankly described his history in these two areas. Personal conduct concerns raised by his omissions on his July 13, 2006, and September 7, 2012, SF86s are mitigated.

### **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 the 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. My comments under Guidelines J, G, and E are incorporated into my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is considerable evidence supporting continuation of Applicant's access to classified information. Applicant is a 59-year-old employee of a defense contractor, who has worked as a chief operating officer for a government contractor providing services to several military installations. Applicant is conscientious about security issues. There

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circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

were no allegations questioning his moral character, integrity, or honesty. Applicant is a fair, honest, and forthright employee with good character and sound judgment, who performs his employee and management duties in an exemplary fashion. He has worked for a government contractor for the last 35 years and held a security clearance for 25 or 30 years without any security violations. There is no evidence at his current employment of any disciplinary problems, disloyalty, or that he would intentionally violate national security.

The evidence supporting revocation of Applicant's clearance is more substantial than the evidence supporting continuation of his security clearance. Applicant has three serious offenses—his three convictions for DWI or DUI in 1985, 2006, and 2012. He is on probation for his most recent DUI. Moreover, each and every time he drove while impaired or intoxicated is a serious criminal offense in which he endangered himself and others. Excessive alcohol consumption followed by driving a motor vehicle shows a lack of judgment, rehabilitation, and impulse control. There is no medical diagnosis, evaluation, or prognosis of his alcohol consumption; he continues to consume alcohol; and he is not attending any ongoing alcohol-related counseling or treatment. "By its very nature, [criminal conduct] calls into question a person's ability or willingness to comply with laws, rules and regulations." (AG ¶ 30) Alcohol consumption and criminal conduct concerns are not mitigated. More time without any alcohol-related criminal offenses must elapse to fully mitigate security concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude continuation of Applicant's access to classified information is not warranted at this time.

### **Formal Findings**

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

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	Against Applicant
Subparagraph 1.d:	Withdrawn
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a to 3.d:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to continue Applicant's security clearance. Eligibility for access to classified information is revoked.

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MARK HARVEY  
Administrative Judge