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

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| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 14-02908 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

08/31/2015

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## Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has four drunk-driving offenses on his record. While he has completed inpatient and outpatient treatment for alcohol dependence in 2015, it is too soon to conclude that his alcohol problems will not reoccur. He exhibited poor judgment by omitting his February 2013 drunk-driving arrest from his March 2013 security clearance application. Applicant and his spouse are addressing their serious mortgage delinquency through a Chapter 13 bankruptcy, but more progress is needed to mitigate the security risk. Clearance is denied.

## Statement of the Case

On January 12, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), and Guideline E (Personal Conduct), and explaining why it was unable to find that it is clearly consistent with the national interest to continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry*

(February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on February 10, 2015, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 21, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 29, 2015, I scheduled the hearing for May 26, 2015.

I convened the hearing as scheduled. The Government submitted nine exhibits (GEs 1-9), which were admitted without any objections. A chart, which was prepared by Department Counsel as a supplement to his oral closing argument, was marked as a hearing exhibit (HE), but not admitted as a full exhibit. Applicant submitted seven exhibits (AEs A-G), which were admitted without any objections. He and a union steward testified, as reflected in a transcript (Tr.) received on June 3, 2015.

## Rulings on Procedure

At the hearing, the SOR was amended on motion of the Government and without objection by Applicant, to add the following allegation under paragraph 2, Guideline G:

> b. You attended alcohol treatment from March 25, 2015, to April 24, 2015, at [treatment center name omitted], where you were diagnosed with alcohol dependence. Upon discharge, you were provided several aftercare recommendations.

Additionally, SOR 4.a. was amended to correct a typographical error as to the section number concerning the police record inquiries on the e-QIP.

## Summary of SOR Allegations

The amended SOR alleges under Guideline J (SOR 1.a, 1.c, 1.e, and 1.g), and cross-alleges under Guideline G (SOR 2.a), that Applicant was charged with drunk-driving offenses (driving under the influence (DUI) or driving while intoxicated (DWI)) in February 2013, November 2006, July 1993, and June 1990. Additionally, under Guideline J, Applicant is allegedly guilty of operating under suspension in August 2011 (SOR 1.b) and of driving an unregistered and uninsured vehicle in May 2001 (SOR 1.d). He was also charged in May 1991 with fraud in obtaining unemployment benefits (SOR 1.f) and in December 1988 with assault 3rd degree (SOR 1.h). In addition to the DUI offenses, Applicant is alleged under Guideline G to have received alcohol rehabilitation treatment from March 25, 2015, to April 24, 2015, for alcohol dependence (SOR 2.b). Under Guideline F, Applicant allegedly owes a $42,369 charged-off balance (SOR 3.a), is behind in his mortgage $40,803 (SOR 3.b), and owes a $1,926 collection debt (SOR 3.c). Under

Guideline E, Applicant is alleged to have falsified his March 2013 Electronic Questionnaire for Investigations Processing (e-QIP) by denying that he had ever been charged with an alcohol or drug offense (SOR 4.a) and by denying that he was currently over 120 days delinquent on any debt (SOR 4.b). The criminal allegations in SOR 1.a-1.h were cross-alleged under Guideline E (SOR 4.c).

When he answered the SOR, Applicant admitted the allegations under Guideline J, Guideline G, Guideline F, and the Guideline E concerning his criminal arrest record without explanation. He denied the intentional falsification of his e-QIP alleged in SOR 4.a and SOR 4.b.

## Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 50-year-old high school graduate. After dating for 10 years, he and his current spouse married in September 2003. They separated in March 2015. Applicant was previously married from 1987 to 1995.[1] Applicant has two children from his first marriage, who are now 27 and 25. He has a 24-year-old stepdaughter, who is married. Applicant has worked for his current employer since February 1999. He is a first class machinist. (GEs 1, 2; Tr. 26-28, 119.)

### Criminal Conduct and Alcohol

Applicant started drinking beer as a high school senior. Once he reached legal drinking age, Applicant drank two to three beers twice weekly at bars. On December 6, 1988, Applicant was arrested for assault, 3rd degree, by the state police. (GE 8.) Applicant does not now recall the arrest (Tr. 55-56), and available information does not reflect the disposition of the charge.

In June 1990, Applicant was stopped for speeding. He was arrested for DWI. His driver's license was suspended for 90 days as a result. (GE 2.) Applicant admits that he had been drinking, but he does not now recall the amount. (Tr. 54-56.)

Following a period of unemployment, Applicant began working as a machine shop supervisor in October 1990. He knowingly continued to collect unemployment benefits after he returned to work, and in May 1991, he was charged with fraudulent obtaining of unemployment benefits. (GE 8; Tr. 52-54.) Applicant does not recall any penalty other than he was ineligible for unemployment when he again was out of work. (Tr. 54.)

On July 5, 1993, Applicant consumed eight or ten beers before driving to see his wife, who was working at the time. They had an argument, and while driving home,

[1] Applicant gave an estimated divorce date of August 1992 on his March 2013 e-QIP. (GE 1.) He previously indicated on his March 2001 SF 86 that he and his first wife divorced in January 1995. (GE 2.) The 1995 date is likely accurate, given the 2001 SF 86 was closer in time to his divorce.

Applicant was stopped for driving erratically. The officer observed several bottles of beer on the floor of Applicant's vehicle. Applicant failed field sobriety tests and was arrested for DWI with a .18% blood alcohol content; misuse of plates; driving an unregistered vehicle; and no motor vehicle insurance. (GE 7.) Applicant asserts that he rarely drank and that a six-pack of beer would sit in his refrigerator for a couple of weeks. He admits that he was intoxicated on that occasion, however. (Tr. 50-52.)

Applicant resigned from his employment around September 1998 following allegations of unsatisfactory performance. He was unemployed until February 1999, when he started working for his current employer. On March 20, 2001, Applicant completed a security clearance application (SF 86) for a secret-level security clearance for his duties with the defense contractor. In response to a police record inquiry concerning any alcohol or drug offenses, Applicant listed June 1990 and June 1994 [sic] DWI offenses. (GE 2.) He was granted a secret clearance. (GE 1.)

While driving his classic car on May 11, 2001, Applicant was charged with driving an unregistered vehicle and no insurance. He was fined $100 for no insurance and $35 for no registration. (GE 3.) Applicant testified at his security clearance hearing that he had not realized that his wife had not re-registered the vehicle and that she had dropped insurance coverage for the car. (Tr. 49-50.) Available information reflects that he and his first wife had divorced well before then. It is unclear whether he was cohabiting with his second wife, whom he married in September 2003.

Around November 2006, Applicant was arrested for DUI. He had consumed beer at a local VFW post before his arrest. (Tr. 49.) He was found guilty, placed on 18 months of probation, and fined. His driver's license was suspended for one year. (Tr. 47-49.) Applicant was also required to attend an alcohol education program. During the 26-week program, Applicant was assessed as being at high risk for alcoholism. Applicant thought he could control his drinking on his own, so he continued to drink. (Tr. 45-46.)

Largely due to his high mortgage payments, Applicant could not afford to pay a $125 application fee and a $100 restoration fee to regain his driving privileges after the November 2006 DUI. He drove a vehicle for several years on a suspended license before August 13, 2011, when he was charged with operating under suspension. He was found guilty in November 2011 and was fined. Applicant paid the fees, and his license was restored. (Tr. 47-48.)

On April 1, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) partially about his alcohol use. Applicant indicated that he did not drink to intoxication often, which he defined as not being able to recall what happened the night before and having a hangover the next morning. It usually took from eight to ten beers for him to become intoxicated. He added that he was currently trying to reduce his use of alcohol, which he claimed had been consistent at two or three beers twice a week since he turned 21. (GE 3.)

By 2013, Applicant was drinking at the VFW post on Tuesdays and some Saturday evenings, usually in quantity of three beers at a sitting. (Tr. 33.) On February 20, 2013, Applicant drank three beers within an hour at the VFW after work. He failed a field sobriety test and was arrested for DUI and failure to obey a stop sign. In September 2013, he was found guilty, fined $150, and placed on supervised probation for 18 months. (Tr. 29-32, 121.)

Applicant continued to drink beer after the DUI. His drinking increased in frequency to almost daily. He drank at home as well as at the VFW. In February 2015, Applicant was suspended from work for five days without pay. He had consumed beer with his lunch while he was on company property before starting his shift. By March 2015, his spouse was pressuring him to seek help for his drinking. Marital and financial stress led him to feel that his life was becoming unmanageable. (Tr. 35-39.)

On March 25, 2015, Applicant voluntarily admitted himself into an out-of-state inpatient alcohol treatment program for chemical dependence. The cost of the program was covered by his insurance, but Applicant had to take unpaid leave from work for four weeks to attend the program. (Tr. 106.) Applicant attended various meetings, including daily Alcoholics Anonymous (AA) meetings, group and individual therapy sessions, and lectures about addiction. He learned coping skills and was able to identify several triggers for his drinking. (Tr. 108.) Applicant remained sober during treatment, and he was an active participant. He was discharged on April 24, 2015, having successfully completed all treatment protocols. (AEs D, E; Tr. 40-41, 104-105.) Recommended aftercare plans consisted of a local intensive outpatient program and 90 AA or Narcotics Anonymous (NA) meetings in 90 days, individual and family therapy, and medication management with a psychiatrist. Applicant was advised to obtain a sponsor and to work the steps in AA or NA. (AE E; Tr. 41.) Applicant completed an intensive outpatient program when he returned home. (AE F; Tr. 108-109.) He has come to realize that he has a drinking problem and cannot drink alcohol safely. (Tr. 112.)

As of late May 2015, Applicant had not consumed any alcohol since his discharge from alcohol treatment. He denies any current cravings for alcohol and any intent to drink alcohol in the future. With his work schedule, he found it difficult to attend daily AA meetings. He attends two AA meetings a week, both on Sundays. Applicant has an AA sponsor, who has eight years of sobriety, and a home group in AA. (Tr. 42-43, 109-110.) Applicant has contacted his sponsor several times, largely due to anxiety and stress. He has medication prescribed to address anxiety and difficulty sleeping, although he tries not to take them. He just arranged to see a private therapist twice a week for individual therapy. (Tr. 43-44.)

Applicant has an ignition interlock device installed on his vehicle that is changed or recalibrated every month. (AE G; Tr. 102.) As part for his sentence imposed in September 2013 for the February 2013 DUI, the interlock device was ordered installed for three years. (Tr. 109-110.)

Applicant believes that his spouse wants to reconcile, but she is waiting to see whether he is sincere about remaining sober. Applicant's stepdaughter, with whom he presently resides, is supportive of his efforts to recover. There is no alcohol in the home. (Tr. 112-113.)

Applicant's union steward testified for Applicant. He has some business inside the machine shop on occasion, so he has had an opportunity to observe Applicant at work. He sees Applicant at the jobsite every night. (Tr. 128.) The union steward has never observed Applicant to be under the influence of alcohol on the job. (Tr. 125.) He is aware that Applicant received a written warning for alcohol at the jobsite, which he believes was in the fall of 2014, but he was not privy to any of the details. (Tr. 126-127.)

**Financial**

Applicant and his second wife bought their three-unit home in July 2004 for $310,000. They took on a primary, adjustable-rate mortgage of $248,000 and a second mortgage of $62,000. (GE 6; Tr. 64.) Their monthly payments were $2,393 on the first mortgage and $609 on the second mortgage. (GEs 4, 9.) His wife took a second job, and he worked overtime to afford the mortgages. (Tr. 48, 116.) In January 2007, their second mortgage was either refinanced or transferred into a new $47,368 loan. (GE 6; Tr. 48, 62-63.) In July 2010, they began to fall behind in their mortgage payments on their primary mortgage. (Tr. 63-64.) In August 2012, they began falling behind on their second mortgage. (GE 9.) They tried unsuccessfully to consolidate their mortgages into one loan. (Tr. 65-66.) They rented out two of the units at $800 each per month to help cover the payment for the first mortgage. (Tr. 66-67.) It proved difficult to keep the units fully rented, although they had a couple of tenants who stayed for two years. They had to evict a tenant in 2014 for nonpayment of rent. (Tr. 115, 118.) As of late May 2015, only one of the two rental units was occupied. (Tr. 67, 114.) Applicant and his spouse considered selling their home, but they owe more on their loans than their home is worth. (Tr. 66.) Applicant sold some items, including a motorcycle, in order to pay the mortgages. (Tr. 83.)

Applicant's spouse has handled the finances since they married. (Tr. 62, 68.) Applicant left it to his spouse to take care of their bills, and he made little to no effort to inquire about their financial situation. (Tr. 68.) As of February 2013, the primary mortgage was $9,583 past due on a $232,948 balance (SOR 3.a). The second mortgage was $1,328 delinquent on a $44,019 balance (SOR 3.b). A credit card account, opened individually in June 2004, had been charged off around July 2009 and placed for collection (SOR 3.c). Applicant had been delinquent 30 to 90 days on other accounts in the past that had been brought current, including a car loan taken out in September 2008 for $17,524 that had been past due 30 days six times or more; a credit card account with a $505 balance that had been past due 60 days and was closed (unalleged debt #1); and a credit card account with an $831 balance that had been 90 days past due (unalleged debt #2). (GE 6.) Applicant contributed $20,000 total to pay for his two daughters' marriages, which took place in 2012 and 2013, knowing that he was behind in his mortgage payments. (Tr. 74-75.)

As of March 2014, Equifax Information Services was reporting that Applicant and his spouse owed $42,369 on their second mortgage, which had been charged off in August 2013 after nonpayment since April 2013. They had made no payment since January 2013 on their primary home loan balance of $232,948, and this loan was reportedly $40,803 past due. Applicant's credit card account with the creditor in SOR 3.c had been charged off in May 2009 for $1,926. Applicant was also reportedly behind $136 on a $630 credit card balance (unalleged debt #2) and $156 past due on a $645 credit card balance (unalleged debt #1). (GE 5.)

After their primary mortgage holder initiated foreclosure proceedings, Applicant and his spouse filed a Chapter 13 bankruptcy petition in April 2014, listing their mortgages and some other debts, including unalleged credit card debts #1 and #2. (GE 4; Tr. 69-70.) Because of Applicant and his spouse's marital separation and an expected loss of income,[2] their bankruptcy attorney advised them on March 10, 2015, that their Chapter 13 was no longer feasible as funded, and should be dismissed or converted to Chapter 7. They were advised to meet with him to discuss their options, which could be disparate. If they could not agree on how to proceed, the only option would be to dismiss their joint Chapter 13 case. (AE A.) As of April 2015, their Chapter 13 plan had not been confirmed. (AE B.) They had a bankruptcy hearing on May 21, 2015. (AE C.)

Applicant testified at his security clearance hearing on May 26, 2015, that he and his spouse wanted to save their home, so they intended to continue with the Chapter 13 case. (Tr. 70.) Applicant expressed his belief that his spouse had made six or eight payments to the bankruptcy court before May 2015, but he did not know the amount. (Tr. 71-72.) He does not have access to her account, from which he indicated payments were made. His paycheck is deposited directly into their joint account to which he has access. Over the past few months, Applicant has paid their bankruptcy attorney $1,000 out of his funds. (Tr. 73.)

As of May 22, 2015, Equifax Information Services was reporting no payments toward Applicant and his spouse's primary home loan since January 2013, but also that their account was $28,717 past due, rather than the $40,803 reported the previous year on a balance of $232,948. The balance of their second mortgage was listed as zero, but both mortgages were also listed as included in a Chapter 13 bankruptcy. Unalleged debt #1 had a past-due balance of $732. Applicant's car loan had been paid off in November 2013, although he had been chronically late 30 days (23 times) in his payments. The debt in SOR 3.c was listed as having a zero balance after being charged off for $1,926. (GE 9.)

As of late May 2015, Applicant was giving his stepdaughter $400 a month for household expenses. He buys his own food and launders his clothes. His take-home pay is approximately $800 a week on an hourly wage of $27.27. (Tr. 27, 79.) He testified that he

[2] The bankruptcy attorney had a phone conference with Applicant's spouse in early March 2015, in which she apparently reported a decrease in income due to loss of employment. (AE A.) Applicant testified discrepantly that neither he nor his spouse has been out of work for longer than two weeks in the last ten years. (Tr. 74.) When asked about the discrepancy, Applicant responded that the unemployment had not occurred. Rather, he and his spouse anticipated that he would lose his job. (Tr. 118.)

pays $637 a month for his spouse's car, a 2013 model-year vehicle bought jointly in 2014. He indicated that he is primarily liable on the loan. (Tr. 80.) The debt is not on Applicant's credit report. (GE 9.) Applicant drives a 1997 model-year pickup truck with almost 210,000 miles on the engine. (AE G.) Applicant pays for his cell phone and for television services that were installed in April 2015. His spouse continues to reside in their marital home, and she collects the rent from their tenant. (Tr. 81.)

**Personal Conduct**

Applicant completed and certified to the accuracy of an e-QIP on March 12, 2013, to renew his security clearance eligibility. In response to the police record inquiries, Applicant disclosed only his November 2006 DUI. He listed the outcome as "suspended license." Applicant did not report his February 2013 arrest for DUI or his 2011 arrest for driving on a suspended license in response to whether he had been arrested in the past seven years. He responded negatively to whether he was currently on trial or awaiting trial on criminal charges, even though the February 2013 arrest was pending. He responded "No" to whether he had ever been charged with any other offense involving alcohol or drugs, and to whether he had ever been ordered to seek counseling or treatment as a result of his use of alcohol. Additionally, he responded "No" to all the financial record inquiries, including whether he had any debts or bills turned over for collection in the last seven years; whether he had any accounts suspended, charged off, or cancelled for failing to pay as agreed in the last seven years; and whether he was currently 120 days past due on any debts. (GE 1.)

On April 1, 2013, Applicant was interviewed by an authorized investigator for the OPM. Applicant confirmed the information reported on his e-QIP about his 2006 DUI offense. He initially denied any other alcohol offenses, but then admitted them after being confronted with his arrest record. Applicant told the investigator that he did not disclose his February 2013 DUI arrest on his e-QIP because it occurred after he completed the form. Likewise, Applicant initially confirmed his negative responses on his e-QIP to the financial record inquiries. On being confronted with the adverse financial information on his credit record, Applicant explained that he was pursuing consolidation of his first and second mortgages to make the payments more manageable and to become current on his home loans as soon as possible. Applicant did not recognize some of the accounts on his record, including the credit card debt in collection (SOR 3.c). (GE 3.) He did not ask his spouse about the unfamiliar debts after his interview because of his anxiety issues. (Tr. 77.)

When asked at his security clearance hearing about his failure to disclose his February 2013 DUI arrest in response to the e-QIP inquiry concerning any pending charges, Applicant responded that he probably did not fully comprehend the question. (Tr. 58.) About why he did not list the DUI arrest in response to whether he had ever been charged with any alcohol or drug offenses, Applicant responded:

> I believe I probably skimmed through this. "Have you ever been charged with a felony offense?" "Have you ever been convicted of domestic violence,

firearms or explosives?" I don't believe that I thoroughly read the other question. (Tr. 59.)

He later admitted that he had been concerned about the possible negative impact on his security clearance if he disclosed his February 2013 arrest. (Tr. 61.) About his failure to disclose any delinquent debts on his e-QIP, Applicant testified that to the best of his knowledge, he was not behind 120 days. Applicant denied having any credit card accounts and speculated that the credit card account in SOR 3.c could be his spouse's account. (Tr. 76.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 the adjudicative process. The administrative judge's overall 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive

Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline J, Criminal Conduct

The security concern about criminal conduct is articulated in AG ¶ 31:

> 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.

The criminal conduct concerns are well established by Applicant's drunk-driving offenses committed in June 1990, July 1993, November 2006, and February 2013; by his fraudulent taking of unemployment benefits in 1991 while he was gainfully employed; and by his driving on a suspended license in August 2011. Applicant was fined for driving an unregistered and uninsured car in May 2001, although they are minor in comparison to his other offenses. Two disqualifying conditions under ¶ 32 are implicated:

> (a) a single serious crime or multiple lesser offenses; and
>
> (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.

Applicant admitted his alleged arrest for criminal assault in December 1988 when he answered the SOR allegations, but he does not now recall the offense, and there is no evidence proving his culpability on that occasion.

The fraudulent acceptance of unemployment benefits occurred 24 years ago and has not been repeated. Mitigating condition AG ¶ 32(a) would seemingly apply:

> (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.

However, that criminal conduct cannot be viewed in isolated from his other offenses, which include recidivist drunk driving that cannot reasonably be mitigated under AG ¶ 32(a). It has been little more than two years since his February 2013 DUI, but that offense occurred after he had completed a 26-week alcohol education program. A lengthier period of 13 years separated his July 1993 DWI and his November 2006 DUI, and his present two years without recurrence is brief in comparison.

Applicant shows some rehabilitation in that he has taken credible steps this year to address his alcohol issues that led to his criminal drunk driving. He is no longer on probation for his February 2013 DUI. Yet, he is very early in his recovery. He is required to maintain the interlock device on his vehicle for another year. It remains to be seen whether he will be able to maintain his sobriety for an extended period, and whether he can be trusted not to drive after drinking. One of the indicia of successful rehabilitation is a good employment record. Earlier this year, Applicant was suspended at work for drinking alcohol at lunch,[3] but he has since completed treatment. Other offenses were due to financial difficulties. Applicant operated a motor vehicle on a suspended license for several years before his arrest in August 2011 because he could not afford to pay the restoration fees. So too, his fraudulent taking of unemployment benefits was to support his family. There has been no recurrence of either driving under suspension or fraudulent unemployment claims, but they are part of a long pattern of criminal behavior that continued after he gained employment with a defense contractor and while he held a DOD security clearance. A longer period of law-abiding behavior is required for me to conclude that he is fully rehabilitated under AG ¶ 32(d), which states:

> (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.

**Guideline G, Alcohol Consumption**

The security concern for alcohol consumption is articulated in AG ¶ 21:

> Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant drank two or three beers twice a week, usually at the local VFW post, for many years. He told an OPM investigator in April 2013 that his pattern of drinking had been consistent since age 21, but that drinking had led to four DUI offenses by then. A court-ordered alcohol education program following his November 2006 DUI had little positive change on his drinking habits. His drinking increased despite him being told he was at high risk for alcoholism. By March 2015, he had developed a serious alcohol problem, as evidenced by his almost daily drinking with a negative impact on his marriage, and by the diagnosis of chemical dependence. Disqualifying condition AG ¶ 22(a) applies because of his repeated DUIs:

[3] The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. *See*, *e.g.*, ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

(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.

Available medical records of Applicant's substance abuse treatment from March 25, 2015, to April 24, 2015, are summary in nature and do not reference any diagnostic criteria. Even so, they reflect that Applicant was treated for chemical dependence and that he received individual therapy from the medical director, who specializes in psychiatry and addictions. Applicant admits that clinicians gave him a diagnosis of alcohol dependence. (Tr. 40.) The diagnosis of chemical dependency triggers one or both of two disqualifying conditions under AG ¶ 22:

(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.

Applicant committed his February 2013 DUI after completing a 26-week alcohol education program for his November 2006 DUI, but it is unclear whether that program qualified as an alcohol rehabilitation program that would implicate AG ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program."

Given Applicant's recidivist drunk driving, the increase in the frequency of his drinking after his most recent DUI, and his consumption of alcohol at lunch in February 2015 resulting in his suspension from work, mitigating condition AG ¶ 23(a) cannot reasonably apply. It provides as follows:

(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.

Applicant's completion of the 30-day inpatient alcohol treatment program on April 24, 2015, and of a follow-up outpatient day program, are actions taken to overcome his alcohol problem under AG ¶ 23(b), and of treatment or counseling required under AG ¶ 23(d). AG ¶ 23(b) and AG ¶ 23(d) state as follows:

(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 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 deserves credit for recognizing that his life had become unmanageable and that he needed to address his alcohol problem and underlying anxiety issues. At the same time, he is very early in his recovery. He had been abstinent from alcohol for only two months as of his security clearance hearing, which is not long enough to establish the pattern needed for full mitigation under AG ¶ 23(b) or AG ¶ 23(d). Some concern also arises in that he has not completely followed the aftercare recommendation to attend 90 AA meetings in 90 days, albeit his failure to do so is because of his work schedule and not a lack of commitment to his recovery or the AA program. Additionally, it was recommended that he continue with family and individual therapy following his discharge from the inpatient treatment program. Applicant had only recently made an appointment with a therapist as of his security clearance hearing, and while he had been prescribed psychotherapeutic medications, he was trying not to take them. Applicant's stepdaughter is supportive of his recovery, but it is too soon to conclude with confidence that he is fully rehabilitated.

**Guideline F, Financial Considerations**

The security concerns about financial considerations are articulated in AG ¶ 18:

> Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant and his spouse started falling behind on their primary mortgage in July 2010 and on their second mortgage in August 2012. They stopped making payments on their first mortgage in January 2013 and on their second mortgage in April 2013. By March 2014, their second mortgage had been charged off for $42,217 and had a reported balance of $42,369. Their primarily mortgage was $40,803 past due. A credit card debt had been charged off for $1,926 and placed for collection in 2009. Available credit reports show that Applicant had a history of late payments on other accounts, including a car loan. While he or his spouse paid off that car loan in November 2013, he owed a past-due balance of $732 on an unalleged credit card debt as of October 2014. His debt problems went beyond those alleged in the SOR. Two disqualifying conditions under AG ¶ 19 are established because of his delinquencies:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

As of May 2015, Applicant had shown no progress toward resolving the credit card debt in SOR 3.c. None of the credit records in evidence contains updated information about that account, so it is unclear whether collection will be pursued against him. Concerning the delinquent mortgage loans, the primary mortgage was reported by Equifax as $28,717 past due with a last payment in January 2013. Equifax had discrepantly reported the debt as $40,803 past due in March 2014, but only $9,572 past due as of September 2014 and covered by a Chapter 13 bankruptcy. With a last payment in January 2013, and a scheduled payment of $2,393 per month, Applicant and his spouse would have been behind $40,803 before they filed for bankruptcy in April 2014. Their second mortgage is reported to have a zero balance after being charged off, although that loan is also in the bankruptcy. Applicant and his spouse's defaults on the home loans are too recent for mitigation under AG ¶ 20(a):

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.

To the extent that their debt problems can be attributed to the failure of some of their previous tenants to pay rent, or to periods of vacancy in one or both of their rental units, AG ¶ 20(b) is partially applicable:

> (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances.

Nevertheless, it is difficult to find that Applicant has acted fully responsibly toward his creditors. There is no evidence that he or his spouse took any action to address their mortgage delinquencies before they filed for bankruptcy, after their primary mortgage lender had initiated foreclosure. Assuming Applicant was unaware of the credit card debt in SOR 3.c before his interview with the OPM investigator in early April 2013, he made no effort to inquire of his spouse or the creditor about the status of the debt. Applicant did not act responsibly by ignoring his debts "hop[ing] that things would just go away." (Tr. 79.)

The filing of a Chapter 13 bankruptcy in April 2014 is a legal way to resolve their debt that could implicate AG ¶ 20(c) or AG ¶ 20(d):

> (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control: and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant testified that his spouse made six or eight payments from her account to the bankruptcy trustee. The $28,717 reported past-due balance on their first mortgage could be accurate if Applicant's spouse made payments from her account to the bankruptcy trustee, and those payments were applied to the first mortgage. The loan was last rated as "5" (pays over 120 days; 5 or more payments past due) in April 2014. The bankruptcy may well have stayed the rating of the mortgage since then. Applicant presented no evidence of any payments made by his spouse, although in preparation for their May 21, 2015, bankruptcy hearing, Applicant and his spouse were advised by their attorney that they must be current with their plan payments in order to have their confirmation hearing. (AE B.) Assuming that payments were made, their final plan had yet to be confirmed as of his security clearance hearing. Without a demonstrated track record of timely compliance with a confirmed bankruptcy plan, it is difficult to fully apply either AG ¶ 20(c) or AG ¶ 20(d). Applicant appears to be living within his means presently, but he also was seemingly unaware of the details of his bankruptcy or indeed of his own credit obligations. He testified to his belief that the debt in SOR 3.c belonged to his spouse. However, the account is on his credit record as an individual account. Financial judgment concerns are not fully mitigated when Applicant continues to ignore his debt issues. (Tr. 77.)

**Guideline E, Personal Conduct**

The security concerns about personal conduct are articulated in AG ¶ 15:

> 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.

Applicant listed only his November 2006 DUI on his March 2013 e-QIP. He did not disclose his previous convictions for drunk driving or his then very recent arrest in February 2013 for DUI. When interviewed by the OPM investigator on April 1, 2013, Applicant inexplicably claimed that the arrest for DUI in February 2013 occurred after he completed his e-QIP. At his security clearance hearing, he initially testified that he was under the impression that because the case was still pending, it need not be listed. When asked why he then did not then disclose the arrest in response to any pending charges, Applicant asserted that he either misread or did not understand the e-QIP question. However, he later acknowledged that he was concerned about the possible impact on his security clearance if he listed his February 2013 arrest.

Applicant was not confronted at his hearing about his failure to list his 1990 or 1993 drunk-driving convictions on his March 2013 e-QIP. His disclosure of both offenses on his

March 2001 SF 86 does not relieve him of his obligation to report them on his application for clearance renewal in March 2013, but it does suggest that he had no intent to conceal them. The evidence supports a finding of intentional concealment of his February 2013 arrest for DUI when he completed his March 2013 e-QIP, however. AG ¶ 16(a) applies:

> (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.

The evidence falls short of establishing that Applicant knowingly falsified his March 2013 e-QIP when he responded "No" to whether he was currently delinquent over 120 days on any debt. The credit card debt in SOR 3.c had been charged off since 2009, but Applicant lacked any recall of the debt. He allowed his spouse to handle their finances and seemed to not know that he is legally liable on that account. Such ignorance of his financial affairs bears negatively implications under Guideline F primarily. About the mortgages, Applicant knew that they had been struggling to pay their mortgages for some time, but he did not believe they were past due more than 120 days. The contemporaneous credit report (GE 5) shows that their primary mortgage was 90 days past due. Their second mortgage was late 30 days as of February 2013.

Applicant's criminal offenses were cross-alleged under Guideline E SOR 4.c. The DOHA Appeal Board has held that security-related conduct can be alleged under more than one guideline, and in an appropriate case, be given independent weight under each. *See* ISCR Case No. 11-06672 (App. Bd. Jul. 2, 2012). Applicant's criminal record includes two DUIs and driving on a suspended license while he was employed by a defense contractor and held a security clearance. It raises concerns about Applicant's judgment generally under AG ¶ 15. His omission of his then very recent arrest for DUI in February 2013 from his March 2013 e-QIP raises issues of vulnerability at that time under AG ¶ 16(e):

> (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Concerning the potentially mitigating conditions under Guideline E, Applicant's deliberate omission of his February 2013 arrest from his e-QIP is not mitigated by AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." When Applicant was initially confronted about his police record, Applicant confirmed his response on the e-QIP, which was not accurate. He then acknowledged his 1990 and 1993 DUI convictions and his pending February 2013 DUI, but only after confrontation.

Similar to AG ¶ 32(a) under Guideline J, AG ¶ 17(c) under Guideline E provides for mitigation because of the passage of time, infrequency, or unusual circumstance:

> (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.

Deliberate falsification or omission of material facts from a security clearance application is not considered minor. The Government must be able to rely on the representations of those persons granted eligibility for classified access. Additionally, as already discussed under Guideline J, Applicant's criminal conduct cannot reasonably be characterized as infrequent or so remote in time to not cast doubt about Applicant's judgment, trustworthiness, or reliability.

Applicant has not sought to excuse his alcohol-related criminal conduct. Yet, his reform of the Guideline E concerns is incomplete, given his lack of candor initially about the reasons for his failure to disclose his February 2013 DUI arrest on his March 2013 e-QIP. Objective evidence shows that he signed and certified to the accuracy of his March 2013 e-QIP after he was arrested, not before. At his hearing, he claimed that he had misunderstood the police record inquiries only to later acknowledge that he had been concerned about his clearance should he disclose his pending drunk-driving charge. Applicant's failure to provide a consistent, credible explanation for his e-QIP omission continues to cast doubts about his judgment, reliability, and trustworthiness.

As for the vulnerability concerns, Applicant could not recall whether he advised his supervisor about his February 2013 DUI arrest around the time that it occurred. (Tr. 61.) The union representative, who testified on Applicant's behalf, had heard about the incident that led to Applicant's suspension. There is no indication that he knows about Applicant's recidivist drunk driving. Yet, Applicant does not present a significant vulnerability risk at present because the Government is now aware of his criminal record and his efforts to address his alcohol problem. AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," applies, but it does not mitigate the concerns about Applicant's judgment raised by his falsification of his e-QIP or by his repeated failure to conform his behavior to the law.

**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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[4] In making the overall commonsense determination required under AG ¶ 2(c), I have

[4]The factors under AG ¶ 2(a) are as follows:

> (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

to consider Applicant's very poor judgment in operating a vehicle while under the influence of alcohol and driving on a suspended license. Furthermore, the investigative and adjudicative process requires, and the Government has a legitimate expectation, that applicants with security clearance eligibility will respond accurately to inquiries. By concealing his then very recent arrest for DUI, Applicant raised considerable doubts about his judgment, reliability, and trustworthiness. Applicant has plans in place to address his delinquent mortgages, but he has yet to credibly explain the delay in filing for bankruptcy. He and his spouse stopped paying their mortgages in 2013 and yet continued to collect rent. It is unclear what they did with the funds that should have gone to the mortgage.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990.). For the reasons noted above, based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant 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:

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| Paragraph 1, Guideline J: | AGAINST APPLICANT |
| Subparagraph 1.a-1.g: | Against Applicant |
| Subparagraph 1.h: | For Applicant |
| Paragraph 2, Guideline G: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | For Applicant |
| Paragraph 3, Guideline F: | AGAINST APPLICANT |
| Subparagraph 3.a: | Against Applicant |
| Subparagraph 3.b: | Against Applicant |
| Subparagraph 3.c: | Against Applicant |
| Paragraph 4, Guideline E: | AGAINST APPLICANT |

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.

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| Subparagraph 4.a: | Against Applicant |
| Subparagraph 4.b: | For Applicant |
| Subparagraph 4.c: | Against Applicant |

## Conclusion

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

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Elizabeth M. Matchinski
Administrative Judge