



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00764

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

09/12/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding criminal conduct, alcohol consumption, and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On September 25, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On April 10, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued him a Statement of Reasons (SOR), under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline J (Criminal

¹ GE 1 (SF 86, dated September 25, 2013).

Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on April 21, 2014. In a sworn statement, dated April 24, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 5, 2014. The case was assigned to me on June 16, 2014. A Notice of Hearing was issued on August 12, 2014, and I convened the hearing by video teleconference as scheduled on August 28, 2014.

During the hearing, four Government exhibits (GE 1 through GE 4) and one Applicant exhibit (AE A) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on September 9, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as exhibits AE B through AE D and admitted into evidence without objection. The record closed on September 4, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR pertaining to criminal conduct (§ 1.a.) and alcohol consumption (§ 2.a.). He also admitted, in part, and denied, in part, the allegations pertaining to personal conduct (§§ 3.a. through 3.d.) Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 61-year-old employee of a defense contractor, and he is seeking to obtain a security clearance. He has been employed by the same defense contractor since November 1997.² He worked at the same facility for ten years before joining his current employer.³ He has never served with the United States military.⁴

A June 1971 high school graduate,⁵ Applicant attended some college classes but did not obtain a degree.⁶ Applicant was married in 1993 and divorced in 2011.⁷ He has one son, born in 1985.⁸

² GE 1, *supra* note 1, at 8-9; Tr. at 32.

³ Tr. at 31.

⁴ GE 1, *supra* note 1, at 10.

⁵ GE 3 (Personal Subject Interview, dated December 12, 2013), at 1; Tr. at 30.

⁶ Tr. at 30.

⁷ GE 1, *supra* note 1, at 12.

Criminal Conduct and Alcohol Consumption

On August 11, 2013, Applicant spent the day bush-hogging and working on shooting houses at his deer camp, where during a three-to-four hour period, he consumed eight to ten beers. He departed the deer camp, and while driving home, he came upon an accident scene with an upside down vehicle in his traffic lane. A deputy sheriff was directing traffic at the site and motioned Applicant to move his vehicle in a certain direction. Through miscommunication, Applicant misunderstood the deputy's directions, and he drove his vehicle forward into the lane usually used by oncoming traffic. The deputy became angered and ordered Applicant to stop his vehicle. He also ordered Applicant to exit the vehicle. Applicant was asked if he had consumed alcohol, and when he acknowledged that he had done so, the deputy arrested him. He was transported to the detention center where he was administered a breathalyzer test which registered .18 which was over the legal limit.⁹

Applicant was charged with driving under the influence 1st (DUI 1st) – a misdemeanor – and wrong way on one way street. Because he had no previous convictions, Applicant was charged as a first offender. After entering a not guilty plea to DUI 1st, he was found guilty, and ordered to pay a \$400 fine and \$300 in assessments. The remaining charge was eventually dismissed *nolle prosequi*.¹⁰ He never lost his driver's license.¹¹ On January 29, 2014, Applicant successfully completed the 12-hour state Alcohol Safety Education Program (ASEP).¹²

Although Applicant has been consuming beer (he does not like the taste of whiskey) since he was 22 years old, the incident of August 2013 is his only incident involving DUI, criminal conduct, or the police.¹³ He has never been diagnosed or treated for alcohol abuse or alcoholism.¹⁴ He routinely undergoes random drug tests and has never had a positive test.¹⁵ Applicant conceded he made a bad mistake when he got behind the wheel after drinking and vows it will never happen again.¹⁶ Since he entered the ASEP program, Applicant has greatly modified his alcohol consumption, both in

⁸ GE 1, *supra* note 1, at 14.

⁹ GE 3, *supra* note 5, at 2; Tr. at 36-38; GE 2 (Abstract of Court Record, undated). Applicant recalled his breathalyzer test result as registering .15, but the abstract lists it as .18.

¹⁰ GE 2, *supra* note 9; GE 4 (Agreed Order of Nolle Prosequi, dated June 2, 2014); GE 4 (Agreed Order Dismissing Appeal with Procedendo to the Justice Court, dated June 2, 2014); AE A (Notice of Appeal, dated December 19, 2013); AE B (Incomplete Copy of Agreed Order of Nolle Prosequi).

¹¹ Tr. at 43.

¹² AE C (ASEP Certificate, dated January 29, 2014).

¹³ GE 3, *supra* note 5, at 2-3; Tr. at 34, 49.

¹⁴ Tr. at 46, 48.

¹⁵ Tr. at 35.

¹⁶ Tr. at 36, 48-49.

terms of frequency and quantity. He no longer drinks during the week, but continues to drink moderate quantities of beer (two or three) on Friday or Saturday.¹⁷

Personal Conduct

On September 25, 2013, when Applicant completed his SF 86, he responded to certain questions pertaining to his police record. The questions in Section 22 – Police Record asked if, in the last seven years, he had: been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him (not including citations involving traffic infractions where the fine was less than \$300 and did not involve alcohol or drugs), and been arrested by any police officer, sheriff, marshal or any other type of law enforcement official. Another question asked if he had ever been charged with an offense involving alcohol or drugs. Applicant answered “no” to all of those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false.

Applicant subsequently denied intending to falsify his responses and explained that he had simply answered the questions at that time with the mindset that he had not been convicted of any alcohol-related crime. In addition, Applicant’s attorney was of the opinion that he would be successful in having the charges dropped.¹⁸ Upon reflection, he now concedes that he made a mistake in his thinking, and he should have responded “yes” to the questions.¹⁹

Character References and Work Performance

Applicant’s maintenance manager is fully supportive of his application for a security clearance. He indicated that Applicant has been an outstanding employee, respected by all of his peers, and is considered hardworking, punctual, reliable, and trustworthy. He also noted that Applicant had been recognized as Employee of the Quarter on one occasion.²⁰

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, “no one has a ‘right’ to a security clearance.”²¹ 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

¹⁷ Tr. at 46, 49.

¹⁸ Applicant’s Answer to the SOR, dated April 24, 2014.

¹⁹ Tr. at 45.

²⁰ AE D (Character Reference, dated August 28, 2014).

²¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."²²

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 useful in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."²³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.²⁴

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified

²² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²³ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”²⁵

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”²⁶ Thus, nothing in this decision should be construed to suggest that I have 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. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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 guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), *a single serious crime or multiple lesser offenses* is potentially disqualifying. Applicant’s history of criminal conduct consists of one arrest and conviction for DUI 1st – a misdemeanor – and a charge, later nolle prossed, for wrong way on one way street. AG ¶ 31(a) has been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where *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*. In addition, AG ¶ 32(d) may apply when *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*.

AG ¶¶ 32(a) and 32(d) apply. Applicant’s sole incident of criminal conduct occurred in August 2013, and there is no evidence that similar conduct occurred thereafter. To the contrary, other than that one incident, Applicant has never had any drug, alcohol, or other criminal incidents or problems.

²⁵ *Egan*, 484 U.S. at 531

²⁶ See Exec. Or. 10865 § 7.

One such incident, which occurred 13 months ago, during a lifetime of 61 years, appears to be aberrant behavior. Because he had no previous convictions, Applicant was charged as a first offender. Now aware of the impact of heavy drinking, and vowing not to find himself in a similar situation, such criminal behavior is unlikely to recur. There is substantial evidence of successful rehabilitation: Applicant has complied with his sentence by paying the fine and assessments; he has a good employment record; he has expressed genuine remorse; he has reformed his habits; and there has been no recurrence of criminal activity. A person should not be held forever accountable for an isolated incident of misconduct from the past, especially if there is a clear indication of subsequent reform, remorse, or rehabilitation. In this instance, I conclude that Applicant's actions no longer cast doubt on his reliability, trustworthiness, or good judgment.

Guideline G, Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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

The guideline notes a condition that could raise security concerns. Under AG ¶ 22(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* is potentially disqualifying. Applicant consumed eight to ten beers over a three-to-four hour period on August 11, 2013, and he was subsequently convicted of the charge of DUI 1st. AG ¶ 22(a) has been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. It is potentially mitigating under AG ¶ 20(a) where *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*. Under AG ¶ 23(b), the disqualifying condition may be mitigated when *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)*.

AG ¶¶ 23(a) and 23(b) apply. As noted above, although Applicant has been consuming beer since he was 22 years old, the incident of August 2013 is his only incident involving DUI or the police. He has never been diagnosed or treated for alcohol abuse or alcoholism. He routinely undergoes random drug tests, and he has never had a positive test. Applicant conceded he made a bad mistake when he got behind the wheel after drinking and vows it will never happen again. Since he entered the ASEP program, Applicant has greatly modified his alcohol consumption, both in terms of

frequency and quantity. He no longer drinks during the week, but continues to drink moderate quantities of beer on Friday or Saturday. Applicant has taken full responsibility for his actions. He has a good employment record; he has expressed genuine remorse; he has reformed his habits; and there has been no recurrence of excessive alcohol consumption. In this instance, I conclude that Applicant's isolated action of drinking and driving, which occurred 13 months ago, no longer casts doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

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.

Also, under AG ¶ 16(e), security concerns may be raised where there is

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

Applicant consumed eight to ten beers over a three-to-four hour period on August 11, 2013, and he was subsequently convicted of the charge of DUI 1st. Also, as noted above, on September 25, 2013, when Applicant completed his SF 86, he responded to certain questions pertaining to his police record. The questions in Section 22 – Police Record asked if, in the last seven years, he had: been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him (not including citations involving traffic infractions where the fine was less than \$300 and did not involve alcohol or drugs), and been arrested by any police officer, sheriff, marshal or any other type of law enforcement official. Another question asked if, he had ever been charged with an offense involving alcohol or drugs. Applicant answered “no” to all of those questions. He

certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false.

Applicant’s responses provide sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or merely the result of misunderstanding on his part. Applicant subsequently denied intending to falsify his responses and explained that he had simply answered the questions at that time with the mindset that he had not been convicted of any alcohol-related crime. In addition, Applicant’s attorney was of the opinion that he would be successful in having the charges dropped. Upon reflection, Applicant now concedes that he made a mistake in his thinking, and he should have responded “yes” to the questions.

I have considered Applicant’s educational background and lengthy professional career in analyzing his actions. Applicant is an intelligent, talented, and experienced individual, and his explanation, under the circumstances, should be afforded some weight. His confusion and resultant actions are considered aberrant behavior out of character for him. His position is reasonable. As it pertains to the alleged deliberate falsifications, AG ¶ 16(a) has not been established. As it pertains to the criminal conduct (DUI 1st), AG ¶ 16(e) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. If *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*, AG ¶ 17(c) may apply. Also, AG ¶ 17(d) may apply if *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*. Similarly, AG ¶ 17(e) may apply if *the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*.

Aside from Applicant’s issues with respect to his answers on his SF 86, his sole negative incident involves his conviction for DUI 1st – a misdemeanor. The incident occurred 13 months ago, during a lifetime of 61 years, and appears to be aberrant behavior. There is substantial evidence of successful rehabilitation: Applicant has complied with his sentence; he has a good employment record; he has expressed genuine remorse; he has reformed his habits; he has assessed the circumstances that resulted in his arrest and conviction, and taken positive steps to avoid such circumstances in the future; and there has been no recurrence of criminal activity. As indicated above, a person should not be held forever accountable for an isolated incident of misconduct from the past, especially if there is a clear indication of subsequent reform, remorse, or rehabilitation. In this instance, I conclude that Applicant’s actions no longer cast doubt on his reliability, trustworthiness, or good judgment.

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁷

There is some evidence against mitigating Applicant's conduct. In August 2013, after consuming eight to ten beers over a three-to-four hour period, Applicant was arrested and charged with DUI 1st – a misdemeanor. One month later, before appearing in court for trial, he completed his SF 86 and falsely denied that in the last seven years, he had been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him (not including citations involving traffic infractions where the fine was less than \$300 and did not involve alcohol or drugs), or arrested by any police officer, sheriff, marshal or any other type of law enforcement official. He also falsely denied that he had ever been charged with an offense involving alcohol or drugs. After entering a not guilty plea to DUI 1st, in December 2013, he was found guilty and ordered to pay a \$400 fine and \$300 in assessments.

The mitigating evidence under the whole-person concept is more substantial. The DUI incident occurred 13 months ago. Applicant is 61 years old, and in those years, he has been involved in only this one incident. He has never had any other drug, alcohol, or criminal incidents or problems. As for the falsifications, Applicant denied intending to falsify his responses and explained that he had simply answered the questions at that time with the wrong mindset that he had not been convicted of any alcohol-related crime, and he had been assured by his attorney that the charges would be dropped. Upon reflection, Applicant now concedes that he made a mistake in his thinking, and he should have responded "yes" to the questions. Based on his reputation, Applicant's actions appear to be aberrant behavior. As noted above, there is substantial

²⁷ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

evidence of successful rehabilitation: Applicant has complied with his sentence; he has a good employment record; he has expressed genuine remorse; he has reformed his habits; he has assessed the circumstances that resulted in his arrest and conviction, and taken positive steps to avoid such circumstances in the future; and there has been no recurrence of criminal activity, excessive consumption of alcohol, or questionable personal conduct.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. Nevertheless, this decision should serve as a warning that the recurrence of criminal activity, excessive consumption of alcohol, or questionable personal conduct, will adversely affect his future eligibility for a security clearance.²⁸ After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated and overcome the Government's case. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

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

Paragraph 1, Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	For Applicant

²⁸ While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant's conduct. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant's security clearance. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

Subparagraph 3.d:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge