



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



In the matter of:)
)
 -----) ISCR Case No. 14-01736
)
 Applicant for Security Clearance)

Appearances

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

01/30/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding personal conduct and alcohol consumption. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On July 17, 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 June 9, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense 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

¹ Item 4 (e-QIP), dated July 17, 2013.

Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption), and detailed reasons why the DOD CAF could not make an affirmative finding under the Directive 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a statement, dated and notarized on July 9, 2014,² Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on September 4, 2014, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on September 10, 2014, but as of October 30, 2014, he had not submitted any further documents or other information. The case was assigned to me on November 3, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to personal conduct and alcohol consumption in the SOR (¶¶ 1.a.-1.c., 1.g.-1.m., and 2.a.). He admitted portions and denied portions of two allegations (¶¶ 1.d. and 1.f.) and denied the one remaining allegation (¶ 1.e.). Applicant's admissions and other comments 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 27-year-old employee of a defense contractor. He has been serving as a general maintenance worker since June 2011. He was unemployed from March 2009 until September 2009, and from August 2010 until June 2011.³ Applicant served in an enlisted capacity with the U.S. Army from November 2005 until March 2009.⁴ He was administratively discharged under honorable conditions with a general discharge certificate due to misconduct.⁵ After attending high school for several years, he received a General Educational Development (GED) diploma in March 2004.⁶ Applicant was married in November 2008 and divorced in December 2010.⁷

² Item 3 (Applicant's Answer to the SOR, dated July 9, 2014).

³ Item 4, *supra* note 1, at 11-12, 15-16; Item 5 (Personal Subject Interview, dated August 13, 2013), at 3.

⁴ Item 4, *supra* note 1, at 12-13.

⁵ Item 4, *supra* note 1, at 13, 15-16. It appears that Applicant was processed under Army Regulation (AR) 635-200, Para. 14-12c: "Soldiers are subject to action per this section for the following: . . . Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM." See, AR 635-200, *Active Duty Enlisted Administrative Separations* (June 6, 2005), as revised, Para. 14-12c.

⁶ Item 4, *supra* note 1, at 9-10.

⁷ Item 4, *supra* note 1, at 18.

Personal Conduct & Alcohol Consumption

Applicant enjoyed his alcohol. He started drinking alcohol when he was 16 years old when he took his father's beer and hiked out into the woods to consume three beers at a time. At times, he would purchase beer or get someone to purchase it for him. He was eventually caught by his father. At the age of 19, Applicant consumed beer to excess and became intoxicated. Early during his enlistment, Applicant and some companions would purchase a 12-pack of beer every Saturday. After consuming his share, Applicant would get drunk and fall asleep. After he returned from a deployment in June 2008, Applicant started consuming ten beers per day, every day. At times, he would switch to rum and drink one-half of a fifth per day. He estimated it might take six shots of rum for him to become intoxicated. Applicant consumed up to eight shots of rum at least three or four times per week. After his discharge, Applicant returned to beer, drinking 12 beers at a time. In December 2012, after consuming 12 beers, he ended up in the hospital and was diagnosed with ulcers and ulcerative colitis. He was advised not to consume alcohol in the future. Applicant contends he has abstained since that time.⁸

Applicant has a lengthy history of inappropriate and criminal conduct, characterized for the purposes of his security clearance review as personal conduct and alcohol consumption, commencing in 2005, and it has continued through at least July 2013. His incidents were varied: alcohol-related, drug-related, driving violations, purely criminal in nature, or deliberate falsifications on a personnel security questionnaire. The SOR alleged 13 such incidents.

(SOR ¶ 1.i.): During the period from about December 19, 2005 to January 4, 2006, while on active duty with the U.S. Army, Applicant wrongfully used marijuana (less than 30 grams), in violation of Article 112a, Uniform Code of Military Justice (UCMJ). His actions were revealed and confirmed when he tested positive after a random urinalysis test.⁹ He was administered nonjudicial punishment under Article 15, UCMJ, and ordered to forfeit \$589 per month for two months.¹⁰

(SOR ¶¶ 1.h. and 2.a.): On December 9, 2006, Applicant was observed driving 71 miles-per-hour (MPH) in a 45 MPH zone. Upon being stopped by the police, he emitted a strong odor of alcohol. He failed the field sobriety tests that were administered and he was arrested. His breathalyzer test registered .084.¹¹ Applicant was charged with driving under the influence of alcohol (DUI), a misdemeanor, and speeding. The

⁸ Item 5, *supra* note 3, at 4-5.

⁹ Item 8 (Incident History, dated July 10, 2009).

¹⁰ Item 7 (Record of Proceedings Under Article 15, UCMJ, dated February 7, 2006); Item 7 (Commander's Report of Disciplinary or Administrative Action, dated March 20, 2006); Item 6 (Federal Bureau of Investigation (FBI) Identification Record, dated July 30, 2013), at 3; Item 3, *supra* note 2, at 2.

¹¹ Item 7 (Military Police Report, dated December 10, 2006), at 5.

court reduced the DUI to reckless driving, for which Applicant was found guilty and fined \$918. He was also found guilty of speeding and fined \$702.¹²

(SOR ¶¶ 1.d. and 2.a.): On or about October 29, 2008, Applicant was ordered by his first sergeant “not to possess or have any alcohol in your room until you completed ASAP (Army Substance Abuse Program)” or words to that effect.¹³ Notwithstanding that order, Applicant kept alcohol in his barracks room, and it was discovered there during an inspection.¹⁴ On November 10, 2008, Applicant was observed on his military post driving at a high rate of speed without his headlights on. Upon being stopped by the police, he emitted a strong odor of alcohol. He failed the field sobriety tests that were administered to him and he was arrested. His breathalyzer test registered .169.¹⁵ Applicant was charged with DUI, failure to illuminate, no license in possession, and speeding. It is unclear as to whether or not those charges were acted upon since his commander advised Applicant that he was considering charging him with willfully disobeying a lawful order of a noncommissioned officer in violation of Article 91, UCMJ. Applicant was administered nonjudicial punishment under Article 15, UCMJ, and sentenced to forfeit \$755 per month for two months, reduced in grade, given extra duty for 45 days, and restricted for 45 days (suspended).¹⁶ Although the SOR alleged that Applicant was also command-directed to attend ASAP, an allegation that Applicant denied,¹⁷ other than the alleged comment of the noncommissioned officer that was purportedly made on or about October 29, 2008 – before the incident or nonjudicial punishment – there is no evidence to support that portion of the allegation.

(SOR ¶¶ 1.f., 1.g., and 2.a.): Applicant self-enrolled into the ASAP in September or October 2008 – before his November 10, 2008 incident – because he finally realized he had a problem.¹⁸ During the period commencing in October or November 2008 until February or March 2009, Applicant attended out-patient group counseling every Wednesday. He stated the “initial complaint or condition was considered alcoholism,”¹⁹ and admitted he was diagnosed with alcohol dependence.²⁰ In addition, although the SOR alleged that Applicant was treated for, and diagnosed with, cannabis dependency,

¹² Item 6, *supra* note 9, at 5; Item 7 (Commander’s Report of Disciplinary or Administrative Action, dated January 24, 2007; Item 3, *supra* note 2, at 2.

¹³ Item 7 (Record of Proceedings Under Article 15, UCMJ, dated December 19, 2008).

¹⁴ Item 5, *supra* note 3, at 6.

¹⁵ Item 7 (Military Police Report, dated November 11, 2008), at 5.

¹⁶ Item 7, *supra* note 13; Item 7 (Commander’s Report of Disciplinary or Administrative Action, dated December 30, 2008).

¹⁷ Item 3, *supra* note 2, at 1. See also Item 8, *supra* note 9, wherein there is no mention of such an order.

¹⁸ Item 3, *supra* note 2, at 1.

¹⁹ Item 5, *supra* note 3, at 6.

²⁰ Item 3, *supra* note 2, at 2.

an allegation that Applicant denied,²¹ there is no evidence to support that portion of the allegation. Applicant admitted that he continued to consume alcohol and that he did not successfully complete the ASAP.²²

(SOR ¶¶ 1.e. and 2.a.): The SOR alleged that on January 13, 2009, Applicant was arrested and charged with DUI. Applicant denied the allegation.²³ There is no evidence to support the allegation.²⁴

(SOR ¶¶ 1.c. and 2.a.): As noted above, in March 2009, Applicant was administratively discharged under honorable conditions with a general discharge certificate due to misconduct.²⁵

(SOR ¶ 1.b.): On some unspecified date in 2011, Applicant was cited for (1) passing in a no-passing zone; and (2) speeding 35 MPH in a 25 MPH zone. He was fined \$154 for the first charge, \$372 for the second charge, and placed on probation for 12 months because he did not have sufficient funds to pay the entire fine at one time.²⁶

(SOR ¶¶ 1.a. and 2.a.): In January 2013, after eating dinner with his girlfriend, as they were leaving the restaurant, Applicant's girlfriend stole a small statue from the front of the restaurant and placed it in Applicant's truck. Applicant was standing next to her when she took the item, but did not stop her from doing so. A security camera recorded Applicant's license number, and when the police called him in to talk, the statue was still in his truck. While they were not arrested, they were both charged with theft by taking, a misdemeanor.²⁷ Applicant and his girlfriend appeared in court, pled guilty, and they were sentenced to 50 hours of community service, fined \$44 per month for four months, and probation until May 2014.²⁸ The statue was returned to the restaurant.²⁹ Applicant indicated his girlfriend was intoxicated when she stole the statue, but that since he has been abstinent since December 2008, he was not. Nevertheless, they were both ordered to undergo a drug and alcohol assessment, which Applicant supposedly passed.³⁰ While the SOR alleged alcohol involvement, in light of Applicant's denial and

²¹ Item 3, *supra* note 2, at 2.

²² Item 3, *supra* note 2, at 2.

²³ Item 3, *supra* note 2, at 1.

²⁴ It appears that the allegation was erroneously derived from Item 8 wherein there was a reference to the November 10, 2008 incident with a final status listed as January 13, 2009.

²⁵ Item 3, *supra* note 2, at 1; Item 5, *supra* note 3, at 3.

²⁶ Item 3, *supra* note 2, at 1.

²⁷ Item 6, *supra* note 9, at 6.

²⁸ Item 5, *supra* note 3, at 8-9.

²⁹ Item 5, *supra* note 3, at 8.

³⁰ Item 3, *supra* note 2, at 1.

explanation, there is no evidence to support that the involvement can be attributed to Applicant.

(SOR ¶¶ 1.j. through 1.m.): On July 17, 2013, when Applicant completed his e-QIP, he responded to certain questions pertaining to his police record. The questions in Section 22 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; he had been arrested by any police officer or other type of law enforcement official; or been or is currently on probation or parole; and if he had EVER been charged with an offense involving alcohol or drugs. [emphasis in original] Applicant answered “no” to all of the questions.³¹ 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. As noted above, Applicant had been issued a summons, citation, or ticket to appear in court in criminal proceedings against him; had been arrested on several occasions; had been on probation; and had been charged with offenses involving alcohol and drugs. Although he initially explained to the investigator from the U.S. Office of Personnel Management (OPM) that he must have misread the questions or simply did not remember the incidents at the time he completed the e-QIP,³² he subsequently admitted falsifying his responses.³³

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.”³⁴ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³⁵

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

³¹ Item 4, *supra* note 1, at 26-27.

³² Item 5, *supra* note 3, at 4, 8-9.

³³ Item 3, *supra* note 2, at 2.

³⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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."³⁶ 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.³⁷

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 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."³⁸

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."³⁹ 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 or 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

³⁶ "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).

³⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁸ *Egan*, 484 U.S. at 531.

³⁹ See Exec. Or. 10865 § 7.

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 E, Personal Conduct

15: The security concern under the guideline for Personal Conduct is set out in AG ¶

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 a condition 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.

Under AG ¶ 16(d), security concerns may be raised if there is

credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations. . . .

Also, it is also potentially disqualifying under AG ¶ 16(e) if 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 served with the U.S. Army from November 2005 until March 2009, and on numerous occasions during that period, as well as thereafter, he committed a variety of wrongful and illegal acts, resulting in nonjudicial punishment and civilian court

actions. He wrongfully used marijuana. He was frequently intoxicated. Applicant was finally administratively discharged under honorable conditions with a general discharge certificate due to his misconduct. Repeated punishment did not serve as a deterrent, for he was subsequently arrested on numerous occasions. When questioned regarding his police history, he lied and tried to conceal the substantial negative issues from his past. Applicant certified that his responses to questions were “true, complete, and correct to the best of [his] knowledge and belief,” but he deliberately falsified responses and concealed critical information in his security clearance application in 2013. AG ¶¶ 16(a), 16(d), and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct, but none of them apply.

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 several conditions 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. In addition, “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,” may apply under AG ¶ 22(c). Similarly, a “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence” is of security significance under AG ¶ 22(d). Additionally, an “evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program” is potentially disqualifying under AG ¶ 22(e). AG ¶ 22(a) has been established by Applicant’s DUI convictions and nonjudicial punishment actions; and AG ¶ 22(c) has been established, because Applicant repeatedly consumed alcohol to the point of intoxication. AG ¶¶ 22(d) and 22(e) have not been established as the record is silent regarding who purportedly made the diagnosis or evaluation of alcohol dependence, and that evidence is crucial to establishing the *bona fides* of the individual who made the diagnosis or evaluation.

The guidelines also include examples of conditions that could mitigate security concerns arising from alcohol consumption. Under AG ¶ 23(a), the disqualifying condition may be mitigated where “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.” In addition, 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(b) may apply.

AG ¶ 23(b) minimally applies and AG ¶ 23(a) does not apply. Although Applicant finally conceded that he had an alcohol problem in October 2008, and acknowledged that he needs to stay away from alcohol, the facts seem to contradict Applicant’s statements. Applicant initially contended that he has been abstinent since December 2008, yet he acknowledged consuming 12 beers in December 2012, when he ended up in the hospital. Considering Applicant’s lack of candor in completing his e-QIP in 2013, without more, his self-reported period of abstinence is difficult to determine.

After careful consideration of the Appeal Board’s jurisprudence on alcohol consumption, I conclude Applicant’s continued alcohol consumption after his alcohol-related convictions; his administrative discharge because of his misconduct, due in part to his alcohol consumption; after he had participated in ASAP; his failure to successfully complete ASAP; as well as his lack of candor, all indicate he is either unwilling or unable to curtail his alcohol consumption. The uncertainty of Applicant’s purported period of abstinence further complicates the issue. Applicant’s conduct demonstrates a lack of judgment and/or a failure to control impulses which is inconsistent with the holder of a security clearance. While his abstinence, if there actually is one, should be viewed favorably, and he should be encouraged to continue his abstinence, it is simply too soon after his most recent consumption of alcohol to conclude that his alcohol problem has been put behind him and will not recur.

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 this case in

light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴⁰

There is very little evidence in favor of mitigating Applicant's conduct. His military service was such that he was administratively discharged under honorable conditions with a general discharge certificate due to misconduct. There are no positive characterizations as to his reputation for honesty, integrity, truthfulness or good work performance. Instead, he simply avers that he has been abstinent.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has an extensive history of inappropriate and criminal conduct, characterized for the purposes of his security clearance review as personal conduct and alcohol consumption. In July 2013, he deliberately falsified material facts and concealed the true facts about his police record. Applicant exhibited a cavalier attitude regarding compliance with rules, regulations, and the law, as well as for truthfulness. Applicant's actions indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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 E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

⁴⁰ 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).

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge