



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



In the matter of:)
)
) ISCR Case No. 14-01806
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: William J. Camp, Esq.

03/27/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline G (alcohol consumption). Eligibility for access to classified information is denied.

Statement of the Case

On June 18, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G. DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

On July 8, 2014, Applicant answered the SOR and requested a hearing. The case was assigned to me on November 5, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 21, 2014, and the hearing was convened as scheduled on December 9, 2014. At the hearing, Department Counsel

offered Government's Exhibits (GE) 1 through 7, while Applicant testified and offered Applicant's Exhibits (AE) 1 through 7. The record was held open until December 23, 2014, for Applicant to submit additional information. On December 15, 2014, Applicant submitted AE 8 and 9. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 17, 2014.

Findings of Facts

Applicant is a 52-year-old employee of a defense contractor. He started working for his current employer in April 1985. He graduated from high school in 1980. He served on active duty in the U.S. Marine Corps from June 1980 to June 1984 and received an honorable discharge. He has never been married and has no children. He has held a security clearance for over 30 years.¹

The SOR listed ten Guideline G allegations. The allegations asserted that Applicant consumed alcohol at times to the point of intoxication from 1980 to at least March 2013 (SOR ¶ 1.a); that he received counseling for alcohol dependency from April to July 2010 and his prognosis was good if he maintained sobriety (SOR ¶ 1.b); that he was arrested for, or charged with, six alcohol-related driving offenses that occurred between 1992 and 2009 (SOR ¶¶ 1.c-1.f, 1.h, and 1.i); that he was charged with urinating in public in 1996 (SOR ¶ 1.g), and that he continued to consume alcohol notwithstanding his alcohol dependency diagnosis (SOR ¶ 1.j). In his Answer to the SOR, Applicant admitted each allegation. His admissions are incorporated as findings of fact.²

SOR ¶ 1.a. Applicant first consumed alcohol with his father when he was 18 years old. This event occurred just before he started Marine Corps basic training in 1980. He had no alcohol-related incidents in the Marine Corps and described his consumption of alcohol in the military as moderate. Following his military service, he indicated that he never consumed alcohol on a daily basis, but admitted that he engaged in binge consumption of alcohol to the point of impairment on occasion. Those episodes primarily occurred when he was socializing with coworkers or friends.³

SOR ¶ 1.i. In December 1992, Applicant was arrested for driving under the influence of alcohol (DUI) and speeding. This arrest occurred while Applicant was on a business trip in State A. On that occasion, he attended a Christmas function at a restaurant with coworkers. Applicant and some of his coworkers later proceeded to a bar. Over a period of three to four hours, he consumed about seven to nine beers. He left the bar around midnight and thought that he was capable of drinking. After returning to the hotel, he decided to go out again to purchase some food. As he was again returning to the hotel, he was pulled over by the police for speeding and failing to stay in

¹ Tr. 19-23, 146; GE 1, 2.

² Applicant's Answer to the SOR.

³ Tr. 23-29, 69-70, 80, 141-146; GE 2.

his lane. He failed a field sobriety test, was arrested, and was taken to the police station. A breathalyzer test indicated that his blood alcohol content (BAC) was about .15%. He hired an attorney to represent him in the court proceeding. Pursuant to a plea bargain, the DUI charge was reduced to reckless driving. He was sentenced as a first-time DUI offender, which included a six-month suspension of his driver's license, probation, a fine, and participation in a DUI prevention course. He successfully completed all of the court-ordered requirements.⁴

SOR ¶ 1.h. In January 1996, Applicant was charged in State B with operating a motor vehicle under the influence of alcohol and operating a motor vehicle without a license. This arrest occurred late at night after he consumed about four or five beers with food at a diner. Soon after leaving the diner, he was pulled over by the police for speeding and failing to stay in his lane. He failed a sobriety test. At the police station, he called an attorney's office and obtained the attorney's recorded message that advised callers not to take a breathalyzer test. Based on the attorney's message, he refused to take a breathalyzer test.⁵

SOR ¶¶ 1.f-1.g. In October 1996, Applicant attended a birthday party at a billiards hall with friends. After leaving the billiards hall, he and a friend went to the same diner in which he ate before the January incident. During that evening, he consumed about five to six beers over a three to four hour period. After leaving the diner, he had a discussion with his friends in the parking lot. They attempted to reenter the diner to use the bathroom, but found it was closed. They decided to urinate in the back of the parking lot near a dumpster. This area was not well lit and was about 150 feet from the road. The police observed them and cited them for urinating in public. The police officer believed Applicant had been drinking alcohol, recommended that he not drive, and called him a taxi. The taxi arrived and was in a state of disrepair with only one headlight. Applicant declined the taxi service. He walked to a nearby motor inn to make a call, but found that building seedy. He thought about walking to his previous landlord's house to request a ride home, but decided that walking through the nearby neighborhood was unsafe. He eventually decided to drive. Shortly after he started to drive, he was stopped by the police. He failed a field sobriety test. A breathalyzer test revealed his BAC was .218%. He was charged with operating a motor vehicle under the influence of alcohol. The pending charges from the 1996 incidents were joined together in one court proceeding. He was convicted as a first-time DUI offender, but given double the punishment. He was sentenced to a two-year driver's license suspension, fined, and ordered to complete community service.⁶

As part of a security clearance inquiry in 2002, he signed an affidavit in which he stated:

⁴ Tr. 29-37, 121-122; GE 2, 3, 4.

⁵ Tr. 37-52; GE 2, 4, 6, 7; AE 1.

⁶ Tr. 37-52; GE 2, 4, 6, 7; AE 1.

I curtailed my drinking habits after my DUI's because I didn't want to even be put in the situation of possibly being arrested for DUI any more and because I wanted to stay healthy and drinking is not conducive to good health. I matured a lot and didn't want my drinking to effect my job.⁷

SOR ¶¶ 1.d and 1.e. In January 2003, Applicant was charged with DUI and improper lane change in State C. This occurred after an evening of eating, drinking, and watching football with coworkers and friends. He estimated that he consumed about six to seven beers over a five-to-six hour period. After he was pulled over by the police, he failed a field sobriety test. A breathalyzer test revealed his BAC was .16%. He retained an attorney and was able to postpone the court proceeding while he deployed overseas in support of the military. In December 2004, Applicant was arrested for DUI and weaving. On this occasion, Applicant first went to a friend's house for dinner and then to a sports bar to watch football and socialize. Over a period of about six hours, he had five to six beers with dinner and two or three more at the bar. While driving after leaving the bar, he was pulled over by an off-duty state police officer. He failed a field sobriety test and refused a breathalyzer test based on advice from his attorney. The two charges were prosecuted in the same month. The January 2003 DUI charge was reduced to "occupy a seat C/F DUI," and he was found guilty of the December 2004 DUI. He was sentenced to probation, fines, fees, and license suspension.⁸

SOR ¶ 1.c. In April 2009, Applicant was arrested for DUI in State C. After finishing work at 11:00 p.m., he attended a social gathering of coworkers and military personnel at a restaurant. He and the others were scheduled to deploy within a week. Over a three-and-a-half to four hour period, he consumed from five to seven alcoholic drinks. When driving home, he was pulled over by the police. He failed a field sobriety test. A blood-alcohol test revealed that his BAC was .16%. He was convicted of the DUI offense and was sentenced to 12 months of probation, 3 days of house arrest, 30 days of community service, and a fine. His driver's license was suspended for a year. Since this was his second DUI in seven years, he was ordered to have an interlock system placed on his vehicle for six months upon reinstatement of his driver's license. He was also required to undergo a "needs assessment" for alcohol treatment that resulted in his participation in a 17-week outpatient alcohol treatment program.⁹

SOR ¶ 1.b. As part of the court-ordered "needs assessment," Applicant completed a questionnaire, and a determination was made that he needed further evaluation. He next met with a clinical evaluator who was a National Certified Addiction Counselor (NCAC II). The clinical evaluator interviewed him and had him fill out another questionnaire. This evaluation took about one-and-a-half hours. According to Applicant, no clinical testing was performed. The clinical evaluator diagnosed Applicant as alcohol dependent, but never informed Applicant of that diagnosis. He was not provided a copy

⁷ GE 4.

⁸ Tr. 52-59; GE 2, 3.

⁹ Tr. 59-64; GE 2, 3, 5; AE 3.

of the report. The report indicated that Applicant stated that he would no longer drink and drive. After that diagnosis, Applicant attended a 17-week alcohol treatment program from April to July 2010. A Certified Addiction Counselor II with a Ph.D. degree treated Applicant who successfully completed the program. In a letter dated November 14, 2014, the addiction counselor stated:

[Applicant] did well in the program and made successful strives towards gaining sobriety as a goal. When he completed the program, he [had] the tools and knowledge to make sound decisions in reference to consuming alcohol. The diagnosis can be updated to Alcohol Dependency, in Remission. However, only [Applicant] can testify to this.¹⁰

SOR ¶ 1.j. This SOR paragraph alleged, “You continue to consume alcohol notwithstanding your treatment for a condition diagnosed as Alcohol Dependency, as set forth in [SOR] subparagraph 1.b, above.” As noted above, Applicant admitted this allegation in July 2014 in his Answer to the SOR.

During an interview with an Office of Personnel Management (OPM) investigator in March 2013, Applicant reportedly stated that he “realized the error of this [alcohol] use, and does not drink to excess, or drink and drive presently.” He further reportedly stated:

[Applicant] could not recall who he first used alcohol with, or who supplied the alcohol. When he went into the military in 1980, [he used] more. He used weekly, mainly beer, on a Friday or Saturday night. He would drink to intoxication once a month on average. He had a designated driver, and was with friends, names not recalled. He continued this until 2002. He began to use less, as he was being sent to the Middle East in support of the war effort. He went months without drinking and had no alcohol dependence. He will consume one to two beers on the weekend at a cookout currently, and does not use to intoxication. He will continue this use into the future. He stated intoxication to him will be feeling the effects of alcohol so that he would not drive. He would have to have over four beers or more to become intoxicated. He has no intent to misuse alcohol, and he had no change in behavior, and no complaints about his use of alcohol.¹¹

In response to his counsel’s questions about the OPM interview, Applicant testified as follows:

[Applicant’s Counsel]: Well, now, isn’t it true that you stated previously to the OPM investigator that you do occasionally drink?

¹⁰ Tr. 64-75; GE 2; AE 2. Applicant first saw the clinical evaluator’s report as part of this security clearance proceeding. See Tr. 71-75.

¹¹ GE 2.

[Applicant]: The question he had asked was, if you do drink, what do you drink, how much. Now, at the time I had the interview with the OPM investigator, I had the interlock installed on my car. Obviously, the answer then was no, none, or zero. We were referring to drinking in general, my consumption, is where that question was, and where it came from.

[Applicant's Counsel]: Okay. Now [Applicant's first name] --

[Judge]: Well, let me ask you this question. When's the last time you had any alcohol?

[Applicant]: Any alcohol, sir, was about 16 months.

[Judge]: You haven't had a drink in 16 months?

[Applicant]: Yes, sir.¹²

Later during cross-examination, Applicant testified:

[Department Counsel]: I know your comment that you haven't had a drink in 16 months.

[Applicant]: Yes, sir.

[Department Counsel]: When was the last time you drank an alcoholic beverage, and what were the circumstances?

[Applicant]: The circumstances I had an alcoholic beverage were – I believe it was a birthday party for my sister.

[Department Counsel]: Okay. And was this at your home or someplace you drove to?

[Applicant]: At her home.

[Judge]: What month was that and year?

[Applicant]: September.

[Judge]: Of 2013?

[Applicant]: Actually that would have been September 2012. So we're – that's what I was saying. We're talking – it was over 18 months.

[Judge]: Well, September 2012 is over two years ago. Right?

¹² Tr. 80-81.

[Applicant]: Twenty-four months. Yes, sir. I think I said earlier 18, but it's –

[Judge]: You said 16 earlier. Why 16 months you said earlier, and now you're giving us a different date? Can you explain that?

[Applicant]: Yes. The date I was referring to was whenever we were taking about the consumption. I had also used alcohol in cooking meals as well as providing alcoholic beverages. Now, going back to the last time frame where I consumed alcohol purely as consumption was on her birthday. I'm sorry about the month, but I believe it was that time frame.

[Judge]: So let me ask you this question.

[Applicant]: Yes, sir.

[Judge]: Have you had a drink of beer, wine, any other type of alcohol since September 2012?

[Applicant]: No, sir.

[Judge]: And the reason why you told us 16 months earlier, which is an earlier – more recent date, is because you consumed alcohol because you used it for cooking purposes?

[Applicant]: Yes, sir.¹³

When asked questions to authenticate the summary of his OPM interview, Applicant again reiterated that his car had an interlock system installed at the time of the interview. The device was installed about two weeks before the interview. He stated that device was very sensitive and could detect if an individual consumed alcohol in the previous 12 hours. He stated that he was not consuming any alcohol at the time of the interview. He also testified that he told the investigator that he was using alcohol for cooking purposes, but that comment was not noted in the summary of the interview. He further testified that he had not been informed that he had been evaluated as alcohol dependent before that interview.¹⁴

In November 2014, Applicant was evaluated by a licensed psychologist who had a Ph.D. and was board certified in forensic psychology and neuropsychology. During this latest evaluation, Applicant completed interviews, questionnaires, and testing. The psychologist noted that neither the clinical evaluator nor the addictions counselor that examined Applicant earlier had the legal authority to diagnose a mental illness in that state. The psychologist reported that Applicant “denies any alcohol consumption in over

¹³ Tr. 113-115.

¹⁴ Tr. 80-81, 118-121.

a year (2013) and any daily use of alcohol in the past.” In the report of his evaluation, the psychologist stated:

[Applicant’s] score on the AUDIT was ‘5’ suggesting the episodic use of alcohol use in the past, but, no current use, nor a history of alcohol use that would indicate dependency on alcohol. His AUDIT score indicates that his is low risk for continued alcohol related issues. He would be considered a hazardous drinker, but not dependent on alcohol.

The psychologist further stated “the following diagnosis is most descriptive of his alcohol related issues: F10.10 Alcohol Use Disorder, mild, in sustained remission since 2013.”¹⁵

In a post-hearing affidavit, the psychologist indicated that, during Applicant’s evaluation, he was applying the standards set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). This latest version of the DSM apparently no longer uses the diagnoses of “alcohol abuse” or “alcohol dependence.” He explained his diagnosis by stating:

The Alcohol Use Disorders Identification Test (AUDIT) was developed by the World Health Organization to screen for excessive drinking and in particular to help professionals identify people who would benefit from reducing or ceasing drinking. The AUDIT assists the professional in identifying whether the person being assessed has hazardous (or risky) drinking, harmful drinking, or alcohol dependence. Results of the AUDIT are consistent with ICD-10-CM and DSM5 definitions of alcohol use disorders and potentially harmful alcohol use. An AUDIT score of 5 suggests that the individual is not currently suffering from any symptoms that would lead to being diagnosed as suffering from an Alcohol Use Disorder without a significant history of alcohol related issues. His DSM5 (305.00) and ICD-10-CM (F10.10) diagnoses are the same: Alcohol Use Disorder, Mild, In Sustained Remission. “In Sustained Remission” means that the criteria necessary to diagnose an alcohol use disorder has been met in the past, but, none of the criteria for alcohol use disorder has been met at any time during a period of the last 12 months or longer. Thus, he is not currently experiencing any alcohol related psychiatric disorder that would result in questionable judgment or impact his ability to be reliable and trustworthy.

Hazardous drinking is considered a pattern of alcohol consumption that increases the risk of harmful consequences for the user at the time the consumption occurs. Typically, individuals who are classified as having a hazardous drinking pattern do not present with symptoms characteristic of a diagnosed alcohol related disorder because the consumption is episodic in nature and does not cause clinically significant distress or regular impairment in social, occupational, or other important areas of functioning.

¹⁵ Tr. 76-90; AE 4.

In this case, he has acknowledged that consequences of his hazardous drinking and realizes that any continued alcohol use has significant consequences for his occupational placement. Thus, he has established a current pattern of abstinence from alcohol as well as successfully completed all legally required and mandated programs because of his DUI history. He does not appear to be a significant risk of continuing to consume alcohol, exercise questionable judgment, or experience any failure to control his impulses.¹⁶

Applicant disclosed his DUI charges and convictions in his Electronic Questionnaire for Investigations Processing (e-QIP) dated February 25, 2013. He testified that he self-reported each DUI incident to his supervisor after they occurred. He acknowledged that he had an alcohol problem, but he did not consider himself an alcoholic. He has had no alcohol-related incidents at work. He stated that he was not presently participating in any type of alcohol treatment program, including attendance at Alcoholics Anonymous (AA) meetings. He indicated that the last time he participated in an AA meeting was four or five years ago. No evidence was presented that he participated in an employee assistance program. He testified that his intent was to not drink alcohol in the future.¹⁷

Applicant has worked for his current employer for almost 30 years. Over the years, his work performance appraisals reflect that he consistently “exceeds expectations.” He has received certificates and plaques recognizing his outstanding contributions. He has deployed overseas on a number of occasions, including to Kosovo and the Middle East, in support of U.S. military operations.¹⁸

Applicant submitted a number of letters of reference from coworkers and friends attesting to his professionalism, reliability, and trustworthiness. His manager noted that Applicant’s job consists of traveling to remote, sometimes dangerous locations around the world. Two of the letters talked about his attendance at AA meetings. He has also been active in various community projects.¹⁹

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹⁶ Tr. 76-90; AE 4, 8, 9. See National Institutes of Health comparison between DSM–IV and DSM-V at <http://pubs.niaaa.nih.gov/publications/dsmfactsheet/dsmfact.pdf>. DSM–IV described two distinct disorders - alcohol abuse and alcohol dependence - with specific criteria for each. DSM–5 integrates the two DSM–IV disorders, alcohol abuse and alcohol dependence, into a single disorder called alcohol use disorder (AUD) with mild, moderate, and severe sub-classifications.

¹⁷ Tr. 59, 123-126, 141-146; GE 1, 2.

¹⁸ Tr. 90-113; AE 5, 6, 7.

¹⁹ Tr. 90-113; AE 7.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

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

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

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

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

- (a) alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as in alcohol abuser or alcohol dependent;
- (c) habitual or binge consumption of alcohol to the point of impaired judgment regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; and
- (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Between 1992 and 2009, Applicant committed six alcohol-related driving offenses that resulted in multiple DUI or reckless driving convictions. He acknowledged that he engaged in binge consumption of alcohol. In November 2009, a National Certified Addiction Counselor (NCAC II) who performed evaluations as part of a court-ordered alcohol “needs assessment” evaluated Applicant as alcohol dependent.²⁰ A Certified Addiction Counselor from the 17-week treatment program also evaluated him as alcohol dependent. Later, a licensed psychologist diagnosed Applicant with alcohol use disorder, mild, in sustained remission.²¹ All of the above disqualifying conditions apply in this case.

AG ¶ 23 sets forth four alcohol consumption mitigating conditions:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur or

²⁰ See ISCR Case No. 07-00558 (App. Bd. Apr. 7, 2008) for a discussion of the terms “medical professional” and “licensed social worker.” AG ¶¶ 22(d) and 22(e) “contemplate a broad range of providers who, by education and by position, are qualified to diagnose and treat alcohol dependence and other substance abuse disorders.” In applying the guidelines, “[j]udges must be guided by common sense and with a view toward making a reasoned determination consistent with the interests of national security.” Applying that standard, AG ¶ 22(e) encompasses the alcohol dependence evaluations conducted by the National Certified Addiction Counselor and Certified Addiction Counselor.

²¹ See note 15 above.

does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical health professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant's six alcohol-related driving offenses occurred over a period of 17 years when he was between the ages of 30 and 47. Almost six years has passed since his last DUI arrest. Nonetheless, given his long history of alcohol-related offenses including significant periods between arrests, the passage of time since the last arrest is not so long ago as to conclude that recurrence is unlikely. His alcohol-related driving offenses continue to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 23(a) does not apply.

Following his last DUI, Applicant successfully completed a 17-week alcohol treatment program. A certified addiction counselor indicated that Applicant did well in that program and made successful strides towards gaining sobriety. The counselor updated Applicant's diagnosis to alcohol dependence in remission. At the time of the hearing, Applicant was not attending AA meetings and had not done so in four or five years. He had no alcohol-related incidents since completing the treatment program. Furthermore, a psychologist recently concluded that Applicant was not alcohol dependent, but diagnosed him with alcohol use disorder, mild, in sustained remission. Based on his evaluation, the psychologist concluded that Applicant "does not appear to be a significant risk of continuing to consume alcohol, exercise questionable judgment, or experience any failure to control his impulses."

Applicant's varying statements about when he stopped drinking alcohol are troubling. Based on an interview in March 2013, an OPM investigator reported that Applicant was then consuming one or two beers on the weekend at a cookout and would continue such use in the future. At the hearing, Applicant indicated that he was not drinking at the time of that interview because he had an interlock device installed on his vehicle two weeks earlier. In his Answer to the SOR in July 2014, he admitted that

he continued to consume alcohol.²² Based on a November 2014 evaluation, a psychologist apparently thought that Applicant stopped consuming alcohol in 2013, *i.e.*, more than a year before the evaluation with no specific date mentioned. In a less than convincing manner, Applicant testified that the last time he drank alcohol was in September 2012. His explanation for some of the varying statements, *i.e.*, he last drank alcohol in September 2012 and he last consumed alcohol in cooked food 16 or 18 months before the hearing, was not persuasive. His inconsistent statements undercut his claim that he has abstained from drinking alcohol since September 2012. Based on the record evidence, I find that Applicant failed to establish a pattern of abstinence.

As part of a security clearance inquiry in 2002, Applicant signed an affidavit stating that he had matured and curtailed his drinking habits because he did not want to place himself in a situation where he could possibly be arrested for DUI. He obviously did not follow through on that declaration because he subsequently committed three more DUI offenses. His driving offenses are egregious and demonstrate a significant lack of reliability, trustworthiness, and good judgment. From the evidence presented in this hearing, I find that additional time is needed for Applicant to establish a pattern of abstinence or responsible use of alcohol so that he can demonstrate convincingly that his alcohol problems are behind him. AG ¶¶ 23(b) and 23(d) partially apply. AG ¶ 22(c) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

²² The verb "continue" in SOR ¶ 1.j was written in the present tense. Of note, Applicant's statement that he was never informed that he was diagnosed as alcohol dependent until receipt of the SOR is believable. Since the gravamen of SOR ¶ 1.j was that Applicant continued to consume alcohol after an alcohol dependence diagnosis, I find in favor of Applicant on that allegation.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served in the military for four years. He has been a valued employee of a defense contractor for almost 30 years. In his civilian position, he deployed overseas on a number of occasions in support of the U.S. military operations. Nevertheless, Applicant has a long history of alcohol-related offenses. Sufficient evidence was not presented to establish that his alcohol-related problems are behind him. Despite the presence of some mitigation, alcohol consumption security concerns remain.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the alcohol consumption security concerns.

Formal Findings

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

Paragraph 1, Guideline G:	Against APPLICANT
Subparagraphs 1.a – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

Conclusion

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

James F. Duffy
Administrative Judge