



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



In the matter of:)	
)	
)	ISCR Case No. 14-02211
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. In 2003, Applicant was sentenced to 138 months in prison for possession with intent to distribute cocaine following his 2001 arrest. His probation ended in September 2014. In 2013, he was arrested and pleaded guilty to Driving While Intoxicated. The Statement of Reasons (SOR) alleges security concerns for criminal conduct, person conduct, drug involvement, and alcohol consumption. He has mitigated the security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 30, 2014, the DoD issued an SOR detailing criminal conduct, personal conduct, drug involvement,

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

and alcohol consumption security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On December 12, 2015, Applicant answered the SOR and requested a hearing. On March 25, 2015, I was assigned the case. On April 29, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on May 7, 2015.² Government's Exhibits (Ex.) 1 through 5 and Applicant's Exhibits A through C were admitted without objection. Applicant testified at the hearing as did his girlfriend. On May 15, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted the criminal conduct allegations in the SOR, denied the falsification allegations under the personal conduct guideline, and neither admitted nor denied the drug involvement and alcohol consumption allegations that referenced the criminal conduct that he had admitted. His admissions are incorporated herein. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 45-year-old salvage yard supervisor who has worked for a defense contractor since February 2013, and seeks to obtain a security clearance. He supervises 15 to 25 people, which pays \$12 per hour. (Tr. 34) His parents were migrant workers/seasonal workers traveling through the Midwest, east coast, and south. (Tr. 37) His parents were struggling financially so, in 1985, he dropped out of school³ after completing the eighth grade to help them. (Tr. 37)

Applicant's supervisor, the manager of yard's scrapping operations, states: Applicant is hard working, diligent, willing to accept responsibility, has been named employee of the month, and is one of the leaders at the company. (Ex. C) His supervisor was sufficiently supportive of Applicant's security application that he lent Applicant \$60 for gas money to be able to attend the hearing, which was 150 miles from Applicant's work. (Tr. 68)

In 1997, Applicant was arrested twice. In January 1997, he was arrested and charged with Battery/Domestic Violence, Displaying a deadly Weapon, and Felony Burglary. This happened 18 years ago when Applicant was 27 years old. He pleaded guilty to the domestic violence charge. Applicant and his ex-wife were divorced in 1991, but had reconciled and were again living together. (Tr. 23) Things were not working out and he moved out of the residence. The residence was in his name and for which he had the keys. (Tr. 23) His ex-wife called and asked him to come by because she wanted

(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

² Applicant was ready to proceed and stated he did not need additional time to prepare. (Tr. 5)

³ While in prison, Applicant obtained his General Educational Development (GED) degree. (Tr. 38)

to get back together. An argument started that escalated. (Tr. 24) She tried to stab him with a kitchen knife and he called the police and left the residence.

After the police arrived, Applicant's ex-wife gave her version of the events. (Tr. 38) She said he had burglarized the home and displayed a weapon. Applicant was arrested. (Tr. 24) It was his home for which he had the keys and he did not have a weapon. At the trial, his ex-wife admitted lying about the burglary and weapon, and those charges were dropped. (Tr. 39) If convicted, he was facing nine-and-a-half years so he chose to plead guilty to the domestic charge. He received probation and had to attend classes. (Tr. 39) He currently has contact with his ex-wife because all but one of his children are living with her. His oldest daughter is 27.

In November 1997, Applicant was arrested and charged with possession of marijuana. He was driving a friend's car when stopped by the police. He gave permission for a search of the car which revealed a partially burned marijuana joint in the ashtray. (Tr. 26) In February 1998, the charge was dismissed. (Ex. 4)

In September 2001, Applicant was arrested and charged with Felony Cocaine Trafficking. In April 2002, the state charges were dismissed when federal charges were brought. He was charged with conspiracy to possess with intent to distribute five kilograms or more of cocaine and possession of firearm in furtherance of a drug trafficking crime. (Ex. 2) In February 2003, he pleaded guilty and was sentenced to 138 months in federal prison and three years of supervised release, which ended in September 2014. (Tr. 28)

At the time, Applicant was unemployed and it seemed to be an easy way to make money. (Tr. 26) He drove his car to another state where he picked up 23 pounds of marijuana on one occasion and 13 pounds on another. (Tr. 39) On the last occasion, his car was loaded with cocaine. (Tr. 54) When returning from the trip, an informant's tip led to his arrest. (Tr. 27) He was arrested at his home. When the house was searched, a rifle and shotgun were found in his closet. (Tr. 67) He said he used the shotgun for dove hunting and the rifle for hunting wild boar. The drug charge resulted in a prison sentence of six-and-a-half years. (Tr. 67) The discovery of the guns resulted in an additional five years in prison. (Tr. 67) His actions cost him ten years of his life. (Tr. 29) He missed his children growing up, their teenage years, their graduations, and missed out on a big part of their lives. (Tr. 29)

In September 2013, Applicant had given a friend a ride to buy groceries. On the way home, they stopped at a bar where he drank beer and a shot of tequila. (Tr. 30) He was arrested for Driving While Intoxicated (DWI) and spent the night in jail. (Ex. B, Tr. 31) In January 2014, he pleaded guilty, was fined \$500,⁴ sentenced to six months in county jail, required to perform 24 hours of community service, and placed on 12 months probation. The jail sentence was suspended for 12 months, and he was placed

⁴ Applicant asserts the total cost of the DWI with court costs, surcharges, fees, and increase insurance was approximately \$10,000. (Tr. 31)

under community supervision. (Ex. B) He attended classes and watched videos concerning the consequences of drinking and driving. (Tr. 65) In January 2015, he completed probation. (Ex. B)

In January 2014, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1) In section 22, Police Record, he indicated he was guilty of possession of a controlled substance and firearms violation, a felony. He indicated he had been sentenced to 138 months in federal prison. He indicated he was incarcerated from September 2001 through September 2011 and placed on probation in September 2011. (Ex. 1)

Applicant's e-QIP asks if he was "ever" convicted of an offense involving domestic violence and if he had "ever" been charged with an offense involving alcohol or drugs. The e-QIP does not list the 1997 domestic violence conviction or the September 2013 DWI. (Ex. 1) The e-QIP also indicates his parents were born in Mexico and were U.S. citizens. Applicant denies falsifying his e-QIP. (SOR Answer) In completing his e-QIP, he was assisted by a company employee. He talked with the employee who entered the material on the e-QIP. (Tr. 17) A week later, Applicant was told to come by and sign the form, which he did without closely reviewing it. (Tr. 17)

During their discussion, Applicant told the company employee that he had previous arrests, but could not remember the exact dates. The company employee then asked him for information about the last ten years. (Tr. 32) Applicant advised the company employee about the DWI and that he was waiting for a court date. (Tr. 17, 32) At that time, he did not know if he would receive a fine, probation, or if he needed to go to court. (SOR Answer) He told the company employee that Applicant's parents lived in Florida and provided their address. He did not tell the company employee that his parents were U.S. citizens. In fact, he was unsure of his parent's immigration status. (SOR Answer) His parents are permanent U.S. residents. (Ex. A, Tr. 33)

When questioned by an investigator, Applicant said the company employee had only inquired about his criminal conduct during the past ten years. He informed the investigator he had been arrested in 1997 on a domestic violence charge. He told the investigator about the 2013 DWI, and said he did not have a court date and did not know what the outcome would be. (SOR Answer) He told the investigator he never told the company employee that his parents were U.S. citizens. (Tr. 41) He told the investigator he did not know his parent's immigration status.

Following Applicant's release from prison, he decided to start fresh in a new state. (Tr. 41) He did not want to return to his prior location and the old friends still there. He stated he had changed his life around. He last drank alcohol at the time of his DWI. (Tr. 43) Even though he attended a wedding where alcohol was served, it was his choice not to drink. (Tr. 44, 66) He does not want to act irresponsibly by drinking and driving again. (Tr. 66) His girlfriend is against drinking and using drugs. (Tr. 33) His girlfriend works for a cleaning company. (Tr. 35) He had worked at the cleaning company but left because it paid minimum wage and there was no chance of advancement. (Tr. 36) He attends church, keeps to himself, and works around the

house. He pays \$150 per week for child support. (Tr. 36) While in prison a sizable arrearage was incurred. (Tr. 37)

Applicant stated he has learned from his mistakes and wants to be a better person for himself, his children, his parents, and his girlfriend. (Tr. 44) He acknowledges he made “very, very poor” decisions in the past and regrets his past conduct. (Tr. 44, 45) He is ashamed of his past conduct and has made changes for the better. (Tr. 46) His live-in girlfriend states that, Applicant is quiet, hard-working, responsible, kind and a good father. (Tr. 48) She says Applicant wants to learn and improve himself and has learned from his mistakes. (Tr. 49) He accepts responsibility for his past conduct and is trying to better himself. (Tr. 65)

Policies

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 must be considered in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of

the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Criminal Conduct

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

AG ¶ 31(a) states it may be disqualifying where there “a single serious crime or multiple lesser offenses.” Similarly, AG ¶ 31(c) provides “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted” may be disqualifying. In 2001, Applicant transported 13 pounds on one occasion and 23 pounds of marijuana on another occasion across state lines without being caught, but was caught transporting more than five kilograms of cocaine.

In 2003, Applicant pleaded guilty to conspiracy to possess with intent to distribute five kilograms or more of cocaine. He was sentenced to 138 months in prison. He also pleaded guilty to a domestic violence charge in 1997 and a 2013 DWI for which his imposed sentence was suspended. AG ¶ 31(a) and 31(c) apply.

The passage of time since the events is a factor to be considered. However, the passage of time, in and of itself, is not the controlling factor. The nature and relevant circumstances surrounding the conduct must also be considered. Applicant took full responsibility for his conduct and pleaded guilty to the charges. He acknowledges he made “very, very poor” decisions in the past and regrets his past conduct. He understands the consequences and his actions and that his conduct cost him ten years of his life. He missed seeing his children grow up; he missed their teenage years, their graduations, and missed out on a big part of their lives. Illegal drug possession is inconsistent with his plans for the future. After leaving prison, he moved to a new state so that he no longer associated with individuals who are involved with illegal drugs.

Security concerns raised by criminal conduct may be mitigated under certain circumstances. AG ¶ 32(a) provides conditions that could mitigate security concerns if “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.

Under AG ¶ 32(d), criminal conduct may be mitigated if “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.” There is “clear evidence of successful rehabilitation.

The domestic violence charge occurred 17 years ago when Applicant was 27 years old. He still communicated with his ex-wife, but there have been no other incidents of domestic violence. His arrest for transporting cocaine occurred more than 13 years ago. He served his time and, in September 2014, completed his three years of supervised release. Following his release from prison, he moved to another state to avoid old friends. Since his release he has been gainfully employed. First working for cleaning company, then as a labor in a salvage yard, and now as a supervisor in that salvage yard. His supervisor states Applicant is hard working, diligent, willing to accept responsibility, has been named employee of the month, and is one of the leaders at the company.

In the past ten year, Applicant's only criminal conduct and only alcohol-related conduct occurred in 2013. That conduct is unlikely to recur. He no longer drinks or uses illegal drugs. While in prison, he received his GED having dropped out of school following the eighth grade. He lives with a woman who supports his actions. He attends church, keeps to himself, and works around the house. He has learned from his mistakes and wants to be a better person for himself, his children, his parents, and his girlfriend. AG ¶ 32(a) and 32(d) apply.

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.”

AG ¶ 22 describes a condition that could raise a security concern and may be disqualifying:

- (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.

In September 2013, Applicant was arrest for DWI and in January 2014, he pleaded guilty to the charge. His sentence to jail was suspended. AG ¶ 22(a) applies.

AG ¶ 23 provides two conditions that could mitigate alcohol consumption security concerns:

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

(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).

In September 2013, Applicant gave a friend a lift to buy groceries. They stopped at a bar on the way home, and Applicant had enough beer and a shot of tequila sufficient to place him over the legal limit. Even though the jail sentence was suspended, the DWI was very costly to Applicant in the form of court costs, surcharges, and other expenses. However, this is the only alcohol-related arrest of this 45-year-old individual. It has been more than a year and a half since his arrest. He no longer drinks. The conduct is unlikely to recur. AG ¶ 23(a) applies.

Even though abstinence is required only for those alcohol dependent, Applicant has established a pattern of abstinence. In September 2013, Applicant stopped drinking. It has been almost two years since his last drink. There is no 100 percent guarantee a person will not return to drinking no matter how much time has passed since their last drink. Individuals sober for ten or twenty years return to drinking. Time is but one indicator. A more significant indicator is Applicant's knowledge and understanding of the problem and his attitude toward addressing the problem. AG ¶ 23(b) applies because Applicant is motivated to change his behavior. He is committed to maintaining abstinence. He chooses not to drink and this decision is supported by his girlfriend.

Drug Involvement

AG ¶ 24 expresses the security concern pertaining to drug involvement: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes two conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

In 1997, 17 years ago, Applicant was arrested and charged with possession of marijuana when a burnt marijuana joint was found in the ashtray of the car he was driving. The charge was later dismissed. More importantly, in 2001, he transported illegal drugs from one state to another. He transported 13 pounds and 23 pounds of marijuana across state lines without being caught, but was caught transporting more than five kilograms of cocaine. He also had firearms in his residence. AG ¶ 25(a) and AG ¶ 25(c) apply.

AG ¶ 26 provides two conditions that could mitigate security concerns:

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

(b) a demonstrated intent not to abuse any drugs in the future, such as:

(1) disassociation from drug-using associates and contacts; and

(2) changing or avoiding the environment where drugs were used; and

(3) an appropriate period of abstinence.

Applicant last involvement with illegal drug occurred in 2001, 14 years ago. The transportation of five kilograms of cocaine with the intent to distribute and possession of firearms are serious crimes for which a serious sentence was imposed. He was sentenced to 138 months in prison with three years of supervised release. The seriousness of the drug involvement must be considered in apply the mitigating factors.

There are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”⁵

⁵ ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge’s decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug

Applicant does not intend to possess or be involved with illegal drugs again. He has changed, matured, and assumed greater responsibility for the course of his life. He takes responsibility for his actions and understands the consequences. His conduct cost him ten years of his life. He missed seeing his children growing up, missed their teenage years, their graduations, and missed out on a big part of their lives. Illegal drug involvement is inconsistent with his plans for the future. He acknowledges he made “very, very poor” decisions in the past and regrets his past conduct. After leaving prison, he moved to a new state so that he no longer associated with individuals who are involved with illegal drugs.

Because of Applicant’s abstention from illegal drug involvement for 13 years, and his recognition of the adverse impact on his life that illegal drugs cause, the incompatibility of illegal use with his goals, and his stated desire never to use again, there is reasonable certitude that he will continue to abstain from illegal drug use. Applicant did not attempt to hide his illegal involvement with drugs. He disclosed it on his e-QIP and during his interviews. His illegal drug involvement, although very serious, does not cast doubt on his current reliability, trustworthiness, or good judgment because it is not recent. AG ¶ 26(a) and 26(b) apply.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is 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.

use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.”) (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

When Applicant completed his January 2014 e-QIP he did so with the assistance of another company employee. Applicant should have been more careful in reviewing the form before signing it. But he is a laborer in a salvage yard with a GED and as such should not be held to the same standard as someone who uses a computer daily and reviews paperwork as a main part of their job.

The e-QIP lists the most serious of his criminal conduct. He told the person he had other arrests, but did not know the dates. Even though the e-QIP asked if Applicant had ever been convicted of domestic violence or had alcohol or drug related arrests, his coworker told him just to list the events of the last ten years. He told his coworker of the September 2013 DWI and that he was awaiting a court hearing on the matter. The domestic violence conviction and the DWI were not listed on the e-QIP and Applicant's parents were listed as U.S. citizens. He never told his coworker his parents were U.S. citizens.

Applicant was wrong in failing to carefully review the form when he was called to sign it. The answers on the e-QIP raise the question of whether the following disqualifying condition under AG ¶ 16 apply,

(a) deliberate omission concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The allegations under Guideline E, (Personal Conduct) are unfounded. The government has shown some of Applicant's e-QIP answers were incorrect, but this does not prove the Applicant deliberately failed to disclose information about his arrests. The Applicant has denied intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

Applicant voluntarily disclosed his DWI to both the individual helping him complete the form and to the investigator. He told the individual helping him that he had other arrests. He also told the investigator about the domestic violence conviction and stated the prior individual had only asked him about the past ten years. He did not tell either individual that his parents were U.S. citizens. In fact, he was unsure of his parent's immigration status. His parents are permanent U.S. residents.

I found Applicant's explanation of his e-QIP answers to be credible. After hearing his testimony, observing his demeanor, and evaluating all the evidence of record, I found his testimony credible on the falsification issue. Because Applicant listed his most serious offense, informed both individuals about the DWI, told the initial individual assisting him that he had other arrests, and never said his parents were U.S. citizens, I

conclude that his contention that his security clearance application omissions were unintentional is credible and that he did not intentionally falsify his e-QIP.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. It is important not to view the conduct piecemeal, but to view all the conduct and the whole-person. In 2001, more than 13 years ago, Applicant transported illegal drugs, which is a serious crime for which he received serious punishment. It must not be overlooked that Applicant was sentenced to 138 months in prison. However, the actions of a 31-year-old man and that of a 45 year-old are not the same. In 2001, he was unemployed and thought it was a good idea to transport illegal drugs. Now, after having lost ten years of his life and lost ten years of being with his children, he is no longer involved with illegal drugs or drinks alcohol and realizes how much his conduct cost him. The 2013 DWI appears to be an isolated incident since there is no other adverse alcohol related events in Applicant's life and is the only criminal conduct during the past ten years.

Applicant is hard working and does well in his job. His lifestyle has changed. When he completed his e-QIP he told his coworker about his DWI and that he had other arrests. He told both his coworker and the investigator about the DWI, never lied about his parent's citizenship, and told the investigator about the domestic violence charge. The felony appears on the e-QIP. When he completed his e-QIP, with the assistance of his coworker, he was not attempting to hide the truth.

Viewed as a whole, and not piecemeal, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance.

For all these reasons, I conclude Applicant mitigated the security concerns arising from his criminal conduct, personal conduct, drug involvement, and alcohol consumption.

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, Criminal Conduct:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant
Paragraph 3, Drug Involvement:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Alcohol Consumption:	FOR APPLICANT
Subparagraph 4.a:	For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge