DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-03377
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Thomas Albin, Esq.

04/24/2015

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Decision

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was granted security clearance eligibility in late 2004, having mitigated a history of alcohol-related criminal conduct from 1967 to 2000. In June 2004, he denied any intent to drink alcohol in the future. Between October 2006 and May 2011, Applicant was arrested twice for drunk driving, twice for being intoxicated in public, and once for risk of injury to a child after drinking. Alcohol has not impaired his work, but the recurrence of alcohol-related criminal incidents raises an unacceptable security risk, particularly where he has had no formal alcohol counseling. Clearance is denied.

Statement of the Case

On October 11, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct), and explained why it was unable to find that it is clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took action under Executive Order 10865, *Safeguarding*

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

Applicant answered the SOR allegations on October 27, 2014, and he requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On December 16, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 17, 2014, I scheduled a hearing for January 13, 2015. On January 5, 2015, counsel for Applicant entered his appearance.

I convened the hearing as scheduled. Seventeen Government exhibits (GEs 1-17) were admitted into evidence. Applicant presented no documentary exhibits, but he and his operations manager testified, as reflected in the hearing transcript (Tr.) received on January 22, 2015. At Applicant's request and with no objection from Department Counsel, I agreed to take administrative notice of a previous DOHA decision granting Applicant security clearance eligibility. A copy of the decision in ISCR Case No. 03-13558, forwarded by email from Applicant's counsel on January 13, 2015, was incorporated in the record on receipt.

Summary of SOR Allegations

The SOR alleges under Guideline G that Applicant consumed alcohol, at times to excess and to intoxication, from about 1965 to at least May 2011 (SOR 1.a), and that he has been arrested for operating under the influence (OUI) or similar drunk-driving charges six times (SOR 1.b-1.e, 1.g, and 1.j); for breach of peace or public intoxication three times (SOR 1.f, 1.h-1.i); and for risk of injury to a child after drinking in May 2011 (SOR 1.k). Under Guideline J (SOR 2.a-2.c) and Guideline E (SOR 3.a), Applicant is alleged to have been charged with disorderly conduct in June 1966 and in June 1967, in addition to his record of alcohol-related arrests between August 1967 and May 2011, detailed under Guideline G.

When he answered the SOR, Applicant admitted the factual allegations under Guidelines G and J, with one exception. He admitted he had been arrested for driving under the influence (DUI) but not for refusal in October 2006 (SOR 1.g). Applicant did not respond to the Guideline E allegation, which referenced the conduct under Guideline G and Guideline J. At his hearing, Applicant amended his answer to admit the Guideline E allegation. (Tr. 7-8.)

Findings of Fact

Applicant's admissions to the allegations are accepted and incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, and after taking administrative notice of the decision in ISCR Case No. 03-13558, I make the following additional findings of fact.

Applicant is a 68-year-old outside electrician, who has worked for the same defense contractor since June 1974. (GEs 1-3; Tr. 41-42.) His longtime tenure with the company was interrupted only by strikes of almost six months in 1975 and 1988. (Tr. 45.) Applicant has held DOD security clearances for his duties since August 1981. He seeks to retain a secret-level security clearance, which was last renewed in late December 2004, following a hearing before a DOHA administrative judge.

Applicant was married from 1973 to 1992. He and his ex-wife had three daughters, now ages 41, 37, and 28. They also had a son, who is now 31. (GEs 1, 2; Tr. 48-49.) They have 11 grandchildren. (Tr. 49.) Applicant has held several part-time jobs over the years to support his family. (Tr. 43.) Although eligible to retire and currently collecting his social security benefit, Applicant is still working because he continues to provide some financial support for his children, especially his son, who is going through a divorce, and his youngest daughter. (Tr. 53.) For the past three years, Applicant has been making the monthly payments on a car loan he co-signed for his daughter four or five years ago. (Tr. 53.)

Applicant drank a couple of beers the night of his high school graduation in June 1965. (GE 1; Tr. 56.) He began a history of adverse legal involvement when he was charged with disorderly conduct in June 1966, for which he paid a $100 fine. (GE 9.) There is no evidence that alcohol was involved. Applicant dates the start of his drinking from 1967. In June 1967, he was charged with disorderly conduct. The charge was filed. (GE 8.) In August 1967, Applicant was stopped by the police near his parents' home and charged with driving while intoxicated (DWI). He was fined $150, and he lost his license for one year. (GEs 2, 7; Tr. 57.)

For three or four years starting in 1983 or 1984, Applicant consumed alcohol three or four nights a week, two to three beers at a sitting in the summers with less drinking in the winters. He drank to intoxication approximately once every other month. (GE 7.)

In December 1987, Applicant was released early from work for the holiday. He stopped off at a bar on the way home, and he consumed six beers and two or three rum drinks. When he got home, he and his spouse had an altercation. Applicant was arrested for assault, breach of peace, and risk of injury to a minor. He was jailed for a few days. The charges were later dismissed on his completion of a family violence program. (GE 7.)

In late June 1989, Applicant's then spouse filed an affidavit with the court seeking an *ex parte* order of protection against Applicant, stating, in part, that he has had a drinking problem; that he was in jail for three days in December 1987 after he threw her across the room; and that in April 1989, he was again drinking and swearing at her. (GE 17.) A restraining order was issued against Applicant. One month later, the order was moderated to permit Applicant to visit his children without a police escort. (GE 7.)

On July 25, 1989, Applicant was interviewed by a Defense Investigative Service (DSS) special agent partially about his adverse involvement with law enforcement and his drinking. Applicant admitted that he had consumed six beers and two or three rum drinks at

a bar after work let out early in December 1987, and that he may have hit or shoved his spouse on that occasion. Since then, he has consumed one or two beers at a bar after work once a month and two or three drinks, usually beer, with his spouse "every third month." He expected to continue to drink at the same rate in the future. (GE 7.) In a statement to a DSS agent of April 2, 2003, Applicant acknowledged that before 1992, he went out drinking two to three nights a week, drinking from three to as many as seven beers at a sitting. (GE 5.)

In November 1989, Applicant attended a concert in an adjacent state. As he was heading home on the interstate, he was stopped for weaving. Applicant contends that his blood alcohol level registered .06% at the police station, which would not sustain a drunk-driving charge in his home state, but it was enough to arrest him for driving while impaired where he was. Applicant had marijuana on him, and he was fined $500 for driving while impaired and for possession of marijuana. (GEs 2, 4; Tr. 58-59, 101.)

In February 1991, Applicant was stopped for making an improper right turn and arrested for DWI. He was sentenced to six months in jail (suspended), placed on one year of probation, and he lost his driver's license for one year. (GEs 2, 4; Tr. 60-61.)

Applicant reportedly reduced the frequency of his alcohol consumption to one night per week from 1993 to 2000. (GE 5.) In April 1998, Applicant was arrested for operating while under the influence or liquor or drug, improper use of a marker plate, operating an unregistered motor vehicle, and failure to wear a seat belt. He had consumed five or six beers at a party. He told the officers that he had consumed only two beers, but his blood alcohol content tested at .151% and .133%, well above the legal limit. He was convicted of a reduced charge of reckless driving, was fined $300, placed on one year of probation, and sentenced to 30 days in jail (suspended). He also lost his driver's license for a few months. (GEs 2, 4, 16; Tr. 61-62.)

In 2000, Applicant increased the frequency of his drinking to two to three nights a week. Some nights he drank six to seven beers. On other nights, he drank no more than three beers. (GE 5.) After consuming nine or ten beers to intoxication at a Christmas party in December 2000, Applicant became argumentative with police, who watched him trespass through a car repair lot. Applicant was arrested for breach of peace, interfering/resisting arrest, and simple trespass. In April 2001, he was fined $135 on a substituted charge of disorderly conduct. (GEs 6, 9, 15.) Applicant denies that he was "very intoxicated" that night. (Tr. 94.)

On October 4, 2001, Applicant completed a security clearance application (SF 86) to renew his security clearance eligibility. In response to inquiry concerning whether he had ever been charged with or convicted of any offense related to alcohol or drugs, Applicant disclosed that he had been arrested for DWI in August 1967, driving while impaired in November 1989, DWI in January and in February 1991, and DWI in April 1998 (reduced to reckless driving). In response to any civil court actions, Applicant indicated that his ex-wife obtained custody of his youngest daughter in June 1998. (GE 2.)

On April 10, 2003, Applicant was interviewed by a DSS special agent about his arrest record and his drinking. Applicant disclosed that in addition to the offenses listed on his SF 86, he had been arrested for disorderly conduct in December 2000, after he had consumed beer to intoxication at a party. Applicant added that because "alcohol has gotten [him] into trouble in the past," he has reduced his drinking to his present three to four beers during the workweek. He admitted that on the weekends, he might purchase a six-pack and drink all six beers. Other times, he consumed two or three of them during the weekend. He admitted drinking to intoxication most recently in December 2002, at a company holiday party. (GE 6.)

At the request of the Applicant, I took administrative notice of DOHA's issuance of a SOR to Applicant on February 17, 2004, alleging, in part, Applicant's record of alcohol-related arrests. After a hearing held on June 4, 2004, Applicant testified that he began attending Alcoholics Anonymous (AA) in April 2004, and he intended to continue to attend AA once to twice a week. He had consumed two beers and a glass of champagne at his son's wedding in May 2004. In June 2004, he decided to give up alcohol completely because he wanted to avoid any future arrests. In late December 2004, the DOHA administrative judge granted Applicant a security clearance. She concluded that Applicant had established his rehabilitation by demonstrating a commitment to sobriety and to AA attendance.

Over the years, Applicant has been selected by his employer for several temporary duty (TDY) assignments competitively pursued by co-workers. (Tr.46-48.) While on TDY out of state in October 2006, Applicant consumed alcohol at a club. On the way back to his apartment complex, he was pulled over by a local officer. Applicant maintains that he had consumed only a couple of drinks, but he had a bad chest cold and could not perform a breathalyzer test. He was charged with DUI and with refusal. (GEs 8, 13, 14.) In May 2007, he was fined $150 on a reduced charge of reckless driving, and he lost his driver's license for 30 days. (GEs 1, 4, 14; Tr. 65.) The refusal charge was dismissed. (GE 13.)

In August 2007, Applicant had about six beers at a club in the same TDY locale as his October 2006 arrest. He decided to sleep in his car before driving from the club because he had consumed too much alcohol. (GE 4.) A local officer found him in his car and arrested him for public intoxication. (GEs 8, 12; Tr. 67.) Applicant was fined $25 plus $72 costs. (GEs 1, 12; Tr. 67.)

In September 2008, Applicant was on TDY in another state. After drinking about six mixed drinks at a club, he went to a convenience store for a coffee, "just to try to regroup a little bit." Applicant was arrested for being drunk in public. In December 2008, he was fined $25 and ordered to pay costs of $81. (GEs 1, 4, 11; Tr. 68.)

In December 2009, Applicant consumed five alcohol drinks with his ex-wife at their daughter's apartment. (Tr. 83.) On May 29, 2013, Applicant told an Office of Personnel Management (OPM) investigator that he argued with his ex-wife, and she called the police as he was leaving. (GE 4.) Applicant testified discrepantly at his hearing: "One thing led to another . . . [he] got a little frisky with [his] ex-wife and she asked [him] to leave." As he was

sitting in his vehicle, the police arrested him for operating under the influence. In February 2010, he was convicted of reckless driving and fined $200. (GEs 1, 8-10; Tr. 69-71.) He lost his operating privileges for four months. (GE 4.) After the December 2009 incident, his youngest daughter told him to watch his drinking, especially in certain situations. (Tr. 109.)

In May 2011, Applicant consumed three beers at a local tavern with some co-workers. He arrived home to find his oldest granddaughter loud and intoxicated. She was 17 at the time and living with him. Applicant maintains that he called the police because she was argumentative, and he did not want the situation to escalate out of control. While the police were in route to his apartment, Applicant's other daughter brought over his five and nine-year-old granddaughters. Applicant became very upset and argumentative with the police on being asked to submit to sobriety tests in his own home. He was arrested and charged with risk of injury to a minor, after he told the police that he had consumed two to three beers while his minor grandchildren were in the home, and for resisting/interfering with the police. Applicant now claims that his then 17-year-old granddaughter lied to the police by claiming that he drank alcohol when he watched his grandchildren, which he denied. (Tr. 73.) He pleaded not guilty, and he was advised that the charges would be nollied in 13 months, if he stayed out of legal trouble. (GEs 1, 4, 8; Tr. 71-74, 95-96, 103.) Applicant does not view the incident in May 2011 as being caused by his drinking. (Tr. 80.) He acknowledges that his relationship with his granddaughter deteriorated after the incident. (Tr. 113.)

On May 9, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP). In response to the police record inquiries, he listed his convictions for reckless driving in October 2006, public intoxication in July 2007 and in September 2008, and for reckless driving in December 2009. He also disclosed that he had been arrested in May 2011 for risk of injury to a child and interfering with a police officer, but the charges had been dropped. (GE 1.)

On May 16, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his criminal record and his alcohol consumption. After detailing the offenses listed on his e-QIP, Applicant was asked whether he had any other arrests. Applicant responded negatively. He was then confronted about his arrests for drunk driving in December 2009 (reduced to reckless driving), April 1998 (reduced to reckless driving), February 1991, November 1989, and August 1967. He attributed his omission of the offenses from his e-QIP to oversight. About his alcohol consumption, Applicant indicated that he normally drinks one or two beers at a sitting once or twice a week and not to intoxication. He explained that he had reduced his drinking because of his past incidents. He denied any intent to drink to intoxication in the future or to drive a vehicle after consuming alcohol. (GE 4.)

Applicant has had some sporadic experience with AA over the years. He last attended an AA meeting in 2011, when he went to three meetings with a co-worker. Applicant has had no formal alcohol treatment. He has never been told by a medical professional that he has an alcohol dependency problem. (Tr. 76-77, 84-85.)

Applicant believes he is a social drinker. He drinks beer in his home, probably once every couple of weeks. (Tr. 77, 108.) A six-pack of beer lasts him three to four weeks now. (Tr. 77.) He does not intend to resume his previous drinking pattern. (Tr. 80.) As of January 13, 2015, Applicant's most recent alcohol consumption was on January 1, 2015, when he drank two beers while watching college football in his apartment. He denies drinking more than three or four beers at a sitting at any time since December 2009. He last drank in quantity of three beers at a cookout in July 2014. (Tr. 82-83, 106-108.)

Applicant testified that he told his supervisor about one of his arrests since 2006, which occurred when he was on TDY. When pressed about whether he had informed his supervisor, Applicant denied any recall. He then admitted that he has not discussed any of the incidents with his supervisors because he "didn't want to be ashamed of [his] actions." Applicant has not advised anyone in the company's security office about his offenses that occurred since 2006. (Tr. 97-99.)

Applicant has not been reprimanded or suspended from work. The evidence does not show that he has any security violations on his record, and Applicant denies any violations. (Tr. 100.) A co-worker, who has been familiar with Applicant's work for the past 36 years, testified at Applicant's security clearance hearing in June 2004, when he was Applicant's direct supervisor. He is now operations manager for their department. This manager testified that Applicant continues to produce work of excellent quality. He has seen no signs of alcohol use by Applicant at work or of any behavior that would raise security issues. In the opinion of this co-worker, it would be a "big loss" to their employer if Applicant were to lose his security clearance eligibility. This supervisor was not made aware before Applicant's January 2015 hearing about Applicant's record of criminal arrests since 2006. On being informed that Applicant had a number of arrests for alcohol-related incidents, the manager responded that it would not change his opinion about Applicant's ability to perform his job. (Tr. 30-35.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

The security concern 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.

Applicant operated a motor vehicle while impaired by alcohol in August 1987, November 1989, February 1991, and April 1998. He was convicted of a reduced charge of reckless driving in the April 1998 incident, but his blood alcohol level would have sustained a DWI conviction. He was convicted of alcohol-related reckless driving in October 2006 while on TDY out-of-state for his employer, and in December 2009, after he had consumed five alcohol drinks at his daughter's apartment. His June 1987 charge of disorderly conduct was filed. In December 1987, he became involved in a physical altercation with his then spouse after he had consumed six beers and two or three rum drinks at a bar.[1] He was

[1] He was arrested for assault, but the charge was dismissed after he completed a domestic violence program. The December 1987 assault was not alleged. The DOHA Appeal Board has consistently held that non-alleged conduct may be considered to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant had demonstrated

convicted of public intoxication or drunk in public in December 2000, August 2007, and September 2008. More recently, in May 2011, he was arrested for risk of injury to a minor and for resisting/interfering after he became argumentative with the police, who had asked him to perform sobriety tests in his home. Although the charges were nollied after 13 months of good behavior, the evidence shows Applicant had consumed three beers at a tavern and apparently another two beers while his grandchildren were in the home before his arrest. Disqualifying condition 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," clearly applies. AG ¶ 22(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," is established in that he drank 9 to 10 beers to intoxication before his arrest for breach of peace in December 2000. He had a blood alcohol content of .151% when arrested for DWI in April 1998. In addition, he drank six mixed drinks at a club while on TDY for his employer in September 2008.[2]

Applicant denies any alcohol abuse after December 2009. He does not consider the May 2011 incident to have been caused by alcohol, even though he drank several beers on that occasion. Whether or not he was legally intoxicated, he showed a serious lapse of good judgment by drinking when he had to care for his grandchildren and for resisting arrest. The passage of time since this arrest is a mitigating condition under AG ¶ 23(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." Even so, he committed five offenses after he had been granted security clearance eligibility in December 2004, based on part on his intent not to consume any alcohol in the future. The recidivism makes it very difficult to mitigate the alcohol consumption concerns under AG ¶ 23(a).

Applicant has a well-established pattern of irresponsible alcohol use. He has not been diagnosed with alcohol dependence, so he is not required to abstain completely from alcohol to satisfy mitigating condition AG ¶ 23(b), which provides as follows:

> (b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and

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successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. *See*, *e.g.*, ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012); ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006). While the December 1987 incident cannot provide a separate basis for disqualification, it shows the extent to which alcohol affected his judgment and family life.

[2] Although the term "binge" drinking is not defined in the Directive, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. *See* U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), http://www.pubs.niaaa.nih.gov/publications/Newsletter/ winter2004/NewsletterNumber3.pdf.

> has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

He denies he has had a problem controlling his drinking since the incident involving his ex-wife in December 2009. In May 2013, he told an OPM investigator that he had consumed three beers at a tavern before arriving home in May 2011 to find his granddaughter drunk. He admitted that he had been charged with risk of injury to a child because he had consumed two to three beers while his grandchildren were in the home. Applicant now denies that he drank alcohol when watching his grandchildren. Even assuming that he moderated his drinking to one or two drinks weekly as of May 2013, and two beers every couple of weeks as of January 2015, there is insufficient guarantee against relapse. He reportedly reduced the frequency of his alcohol consumption to one night a week from 1993 to 2000. Seven years of reportedly moderate consumption did not prevent another five alcohol-related incidents from October 2006 to May 2011. His present three plus years without an alcohol-related incident is not enough to demonstrate that his alcohol abuse is in the past. He told another DOHA administrative judge in June 2004 that he was committed to AA. He has attended only a few AA meetings, and none since 2011. Furthermore, given his history of adverse legal incidents related to alcohol, it is debatable whether his current use of alcohol is considered responsible. Applicant has yet to acknowledge all his issues of alcohol abuse, as evidenced by his belief that alcohol was not really an issue in the May 2011 incident involving his grandchildren. AG ¶ 23(b) is not fully established.

Without professional counseling or even AA to ensure that his alcohol consumption does not get out of control, Applicant does not benefit from either AG ¶ 23(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," or AG ¶ 23(d):

> (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 professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

When viewed in its totality, Applicant's abusive relationship with alcohol is well established and not mitigated under Guideline G.

Guideline J, Criminal Conduct

The security concern about criminal conduct is articulated in AG ¶ 30:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's June 1966 and June 1967 arrests for disorderly conduct are just the start of a long history of law violations, most of it fueled by alcohol. Two disqualifying conditions under AG ¶ 31 apply:

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

For most of his adult life, Applicant has allowed alcohol to impair his off-duty judgment and reliability. Applicant's multiple drunk driving and public intoxication offenses are not adequately mitigated by AG ¶ 32(a), "so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the person's reliability, trustworthiness, or good judgment." Applicant has been a law-abiding citizen since May 2011. Yet, as reflected in the following exchange between Department Counsel and Applicant, Applicant is reluctant to acknowledge his responsibility for escalating the incident involving his grandchildren in May 2011.

> Q. You were talking about the 2011 incident with your granddaughter and if I remember right, you said you had two beers after work and then drove home from the bar next to the yard. Is that right?
> A. Yes.
> Q. And when you got home you said your granddaughter [name omitted], who was 16 or 17 at the time was already intoxicated, is that right?
> A. Correct.
> Q. And she was living with you at that time, is that right?
> A. Yes.
> Q. Was there anyone else at the residence while she was there other than you?
> A. Shortly after that, my middle daughter [name omitted] showed up with her two daughters. She wanted me to watch them.
> Q. And how long had [his eldest granddaughter] been living with you at that point?
> A. I want to say she had been living with me for at least a year and a half.
> Q. Before you said you never had any alcohol when you would take care of your grandkids, but that night, you had had alcohol and you were responsible for [your eldest granddaughter], is that right?
> A. Yes.
> Q. And you agreed that despite you having called the cops, you agree that you had argued with the cops that night?
> A. I agreed to what?

> Q. That you argued with the cops in your kitchen or whatever?
> A. Well, I mean I never heard of giving a sobriety test sitting on your couch in your own home, you know? And when I questioned him about it, they got me for refusal, interfering with police work. Here I am sitting on my couch performing a sobriety test. (Tr. 90-91.)

Without a meaningful acceptance of responsibility, his reform is incomplete. AG ¶ 32(d) only partially applies:

> (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Guideline E, Personal Conduct

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

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

With the exception of the June 1996 and June 1967 disorderly conduct offenses and the August 1967 DUI, Applicant committed his alcohol-related criminal offenses when he was gainfully employed by a defense contractor and while he held a DOD security clearance. His behavior is incompatible with the good judgment that must be required of him with eligibility for classified access. In addition to the general judgment concerns under AG ¶ 15 raised by his extensive record of alcohol-related criminal conduct, AG ¶ 16(e) is established:

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

The operations manager, who testified for Applicant at his DOHA hearings, was unaware that Applicant has been arrested several times since the June 2004 proceeding. Applicant admitted at his January 2015 hearing that he had not told his supervisors or security personnel at work about his arrest record.

None of the mitigating conditions under AG ¶ 17 apply fully. AG ¶ 17(c) is not reasonably satisfied when there is repeated drunk driving:

> (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Furthermore, without some counseling to address the issues that led Applicant to abuse alcohol, AG ¶ 17(d) is not pertinent:

> (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Finally, issues of potential vulnerability have not been adequately addressed. The operations manager testified that his opinion of Applicant to do the job would not change if he learned that Applicant had a number of arrests for alcohol-related incidents. Yet, it is unclear if he knew that Applicant was arrested for DWI when on TDY in October 2006, for public intoxication when on TDY in August 2007, and for drunk in public when he was on TDY in September 2008. AG ¶ 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress," is not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).[3] Applicant's many years of productive work for his defense contractor employer weigh in his favor under the whole-person assessment. At the same time, his pattern of alcohol-related offenses is inconsistent with his security responsibilities. He was given a chance to prove that had overcome his alcohol issues. His subsequent offenses raise serious doubts about his ability or willingness to comply with DOD requirements.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After considering all the facts and circumstances, I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance at this time.

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

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the 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.

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 G:	AGAINST APPLICANT
Subparagraph 1.a-1.k:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a-2.c:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge