

DATE: October 2, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20093

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Robert R. Sparks, Jr., Esquire

SYNOPSIS

From age 14 until 1999, the Applicant had a serious alcohol problem. Since April 1999, the Applicant has attended treatment, actively participated in AA, has a favorable prognosis, maintained his sobriety, and abstained from all use of alcohol. The Applicant has changed his life style and, knowing he is an alcoholic, knows the effect on his life another drink would bring. He does not want to return to his previous lifestyle, has established a new way of life, has reformed from his past actions, and has no intention of drinking in the future. When the Applicant completed his Standard Form 86, he listed some of his arrests but failed to list three alcohol related offenses. The Applicant's explanation for failing to list the offenses was accepted. Clearance is granted.

STATEMENT OF THE CASE

On March 26, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding ⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. On April 15, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on May 29, 2002. A Notice of Hearing was issued on June 11, 2002, scheduling the hearing which was held on June 19, 2002. The Government's case consisted of six exhibits (Gov. Ex.). The Applicant relied on his own testimony and one exhibit (App Ex). A transcript (tr.) of the hearing was received on June 27, 2002.

The record was held open to allow the Applicant to submit additional documents. For good cause, the time period to submit additional documents was extended until July 22, 2002. The documents were received in a timely manner. On July 29, 2002, Department Counsel commented on the Applicant's post-hearing filings, but made no objection to the material's admission. The submissions have been marked and admitted as App Ex B.

FINDINGS OF FACT

The SOR alleges excessive alcohol consumption (Guideline G), criminal conduct (Guideline J), and personal conduct (Guideline E). The Applicant admits the alcohol related incidents and denies his failure to list three alcohol related arrests. He denies the events create doubt about his judgement, reliability and trustworthiness, or display questionable judgement, unreliability, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant is twenty four-years-old, has worked for a defense contractor since May 1999, in a temporary position, and as a full time employee since March 2000 and is seeking a security clearance. The Applicant is a very reliable, valued, outstanding employee, of good character who has received letters of accommodations from his company. (tr. 116, 122, App Ex A)

The Applicant acknowledges he is an alcoholic (Gov. Ex. 2, p. 3) and cannot drink alcohol in the future. Since age 14, his problems with alcohol have been constant until April 1999. (Gov. Ex 2, p.9) At the height of his drinking, he would drink a fifth of liquor and a twelve pack of beer on an average day. (Gov. Ex 2, p.3)

The Applicant used alcohol to excess while in high school. In 1992, at age 15, the Applicant started attending Alcoholics Anonymous (AA) meetings. He did not get much out of these AA meetings. He sat in the back of the room, did not participate, and left the minute he was free to go. The Applicant chose to stop using illegal drugs in the 10th grade, after seeing a counselor. However, the Applicant would occasionally use illegal drugs when he was drinking. Sometimes he learned he had used illegal drugs while drinking after being told later by his friends. He had no memory of having done so. He chose to quit using illegal drugs because they were illegal and unacceptable. He continued with to use alcohol thinking it more socially acceptable.

In 1993, he was arrested for shoplifting when he attempted to steal beer from a convenience store. After being found guilty, he was ordered to attend counseling and was fined \$250.00. He referenced this arrest in his August 2000 (Gov. Ex. 2) and September 2000 (Gov. Ex. 3) statements to the Defense Security Service (DSS) special agent. When he completed his Security Clearance Application, Standard (Std.) Form 86, he was not sure if this arrest occurred when he was age 15 or 16 and so did not list it on the form.

During 1994, the Applicant received treatment for approximately one year from a Licensed Clinical Social Worker (LCSW) for a condition diagnosed, in part, as alcohol abuse. The Applicant has seen this LCSW periodically since that time, last saw the Applicant in June 2002, and last talked with the Applicant in July 2002.

In 1996, he was cited by his college for drinking alcohol in the student lounge. As a result, he was required to meet with a college alcohol counselor. In March 1997, he was arrested for petit larceny/misdemeanor theft for stealing cigarettes and other items from a convenience store. At the time of the incident, he was extremely drunk and in a "blackout" (2) state. (Gov. Ex. 3, 5) He remembers the incident only from what others have told him. (Gov. Ex. 3, p. 2.) He was fined \$100.00 plus \$109.00 court costs, ordered to serve 30 days in jail (26 days suspended), and to complete the youthful offenders program. He was also banned from going to the convenience store or other convenience stores of the same type.

In February 1998, he was arrested for petit larceny/misdemeanor theft for stealing cigarettes and a pack of gum from the same type of convenience store where he had previously been banned. He was under the influence of alcohol at the time of the incident. He was fined \$500.00 (\$400.00 suspended) plus \$160.00 court costs, ordered to serve 90 days in jail (70 days suspended), and barred for entering any of the same type of convenience store in the future. He received one year probation.

Within two weeks, still in February 1998, he was charged with Driving Under the Influence (DUI), he pleaded guilty, was fined \$500.00, ordered to serve five days in jail and attend a one day session of ASAP (Alcohol Safety Action Program). When he appeared at his court date there was no record of him on the docket. He did plead guilty and was told his home state which had issued his driver's license would be notified of the incident so his driver's license could be revoked. The notification never arrived and the revocation occurred. The Applicant made a number of calls to determine the status of his letter of notification. Whenever he called, he was told there was no record of him in their system. (Gov. Ex. 4, p.2)

In April 1998--approximately one week after being barred from all convenience stores of that type, the Applicant was arrested and charged with criminal trespass. The Applicant was sober and up studying for a test when he unwisely chose to go buy cigarettes at a convenience store of the same type from which he had been barred. He had left the store without incident after being questioned by the attendant. He was found guilty, fined \$100.00, sentenced to 30 days in jail which was suspended upon good behavior for one year and upon being restricted from entering any of the same type of convenience stores for one year for any reason.

In June 1998, the Applicant was issued a show cause summons for entering the same type of store. In August 1998, he was found guilty of contempt, and ordered to pay \$130.00 court cost, and to serve 20 days in jail beginning in August 1998. On the day he was to begin serving his jail sentence he appealed the matter. In October 1998, he was found guilty of two counts of contempt, ordered to pay \$576.00 in costs, and sentenced to 44 days in jail to begin in December 1998 and end in mid January 1999.

In February 1999⁽³⁾, the Applicant was charged with indecent exposure at Mardi Gras. He was drunk and exposing himself for Mardi Gras beads. (tr. 41) The Applicant does not remember the arrest. (tr. 41) Most of what he knows about the evening's events is from what his friends have told him. He has little independent knowledge other than he was released on bail the following morning and thought he had been held for public drunkenness. Near the end of his drinking, he was a "blackout" drinker and the "blackouts" occurred often. (Gov. Ex. 2, p. 3) His impression was that, although held over night in the drunk tank, he had not been arrested. (Gov. Ex. 4, p. 3)

After spending the night in jail in the drunk tank, his friends or family paid his bail and he was released. When released, the Applicant did not go before a judge, does not remember being issued a ticket or summons, and was told he did not have to come back for a court date. He never returned to New Orleans and has never received any further communication from the jurisdiction about his incident. He repaid his friends or family the bail money.

When the DSS special agent informed the Applicant about the arrest, the Applicant was surprised and uncertain of what it was. (Gov. Ex. 4, p.3) He had forgotten about the incident and remembers it only when questioned about it.

In February 1999, approximately two weeks after the Mardi Gras incident, the Applicant was arrested and charged with Driving While Intoxicated (DWI). This arrest was not in the same state as his prior DUI and no record of the prior DUI could be located when the Applicant came to court on the February 1999 DWI. (tr. 37) At the time of his arrest his blood alcohol content (BAC) was .22%. After being found guilty he was fined \$500.00, sentenced to 30 days in jail (suspended), ordered to participate in the state ASAP, and his driver's license was suspended for one year. He attended a 12-week alcohol education and counseling program as part of ASAP. The Applicant did not consider ASAP to be counseling which he saw as one-on-one or small group involvement. The Applicant satisfied all ASAP obligations.

From March 1, 1999 to April 12, 1999, he attended counseling due to his excessive use of alcohol. On April 12, 1999, when his parents had him transferred to an alcohol detoxification program nearer their home. On April 19, 1999, the Applicant's girl friend and fraternity brothers intervened and called his parents to come to the university and get him due to his excessive alcohol use. (tr. 45) He withdrew from classes on that date. He was in his junior year at the time. Since leaving college, he no longer associates with his college friends. His last drink of alcohol occurred on that day-- April 19, 1999. (tr. 46)

As of the Spring of 1999, just prior to the intervention, the Applicant--age 21--was drinking daily and binge drinking. He states near the end of his drinking he was drinking heavily, some times consuming 40 beers for days at a time (Gov. Ex. 6, p. 4) and much of his memory about what happened during this time is gone. (Gov. Ex. 4, p.3) His drinking started due to peer pressure at social occasions and grew to where it had to have alcohol and craved it. (Gov. Ex. 2, p. 8) His drinking had adversely affected his health to the point he was vomiting blood.

From April 1999 to December 1999, he was treated by the same LCSW who had treated him in 1994 for a condition diagnosed, in part, as alcohol abuse. The first few months of treatment entailed out patient counseling and medication for depression and alcohol withdrawal. The LCSW last saw the Applicant in June 2002 and last talked with him in July 2002. In July 2002, the counselor completed a substance abuse evaluation (App Ex B) of the Applicant stating:

. . . (the Applicant) has accomplished all of the tasks expected to be completed to ensure long-term recovery from alcoholism. Furthermore, he has developed into a healthy, responsible, and mature individual. I found the dedication and support offered by (Applicant's) family, friends, and co-workers remarkable. I do not think (Applicant's) lack of current attendance in AA detracts from the fact that he lives his life according to the principles taught in AA. In fact, (Applicant's) growth through AA demonstrates why I continue to send people to AA. I applaud his ability to make use of what works in AA and successfully move on with his life.

In 1999, the Applicant returned to AA, got a sponsor, and became very involved in the program. He became extremely active in the group, attending daily AA meetings for two years, during the first year and a half of attendance he missed only three or four days. He attended the world conference of AA in another state, organized AA banquets at hotels, and helping other young people's groups put on AA banquets. (tr. 85) After a year and a half attend the one AA group, he stopped going because he did not agree with the conduct of some of the members of his home group. Specifically, older men attending the meetings were having sex with underage women. In April 1999, he first lived with his parents when he returned from school until he moved out and moved in with his AA sponsor. (tr. 47) At the hearing, the Applicant produced "chits" or tokens showing his involvement with AA. His token for his longest period of abstinence⁽⁴⁾ was for 18 months.

He left the one group and joined another group for six months. He was the youngest person in the new group by 15 to 20 years. The Applicant left the group because he did not have much in common with the group and because he had learned through the program what he needed to keep himself sober. (tr. 49) He currently has an AA sponsor (tr. 51) and has talked with his sponsor within the past two months (tr. 54), and carries his

sponsor's telephone number in his wallet. He realizes he can return to AA should the need arise. He still has a network of individuals in AA he can call upon for support as well as talking to his counselor. He continues to "take a personal inventory" regularly and maintains a diary. He knows and recites the serenity prayer. (tr. 83) The Applicant stated (tr. 53):

I haven't written off Alcoholics Anonymous. I've learned a lot of valuable lessons there, and I still continue to follow a lot of the principles that I learned there of how to keep yourself sober.

The Applicant has learned he needs to avoid bars and clubs⁽⁵⁾; to avoid old situations; that he cannot drink (tr. 57); that alcohol is dangerous for him (tr. 66); that he needed to start fresh and needed to separate himself from his old friends; and talks with a higher power to keep himself straight. He chooses not to drink because he enjoys his job, the relationship he has with his family and new friends. He has a strong work ethic and is dedicated to his work. He has no desire to go back to the way he was. (tr. 58) He no longer has any contact with his fraternity brothers and has dissociated himself from prior friends. He stays busy studying (he's taking university courses), exercising, reading, using computers, and being outdoors. His family, friends and managers at work know of his alcohol addiction. He has grown a great deal since his last use of alcohol. (tr. 65)

The Applicant stated (tr. 78) his life when he was drinking was

. . . completely miserable. I was sick. I'd wake up not knowing what exactly I'd done the night before. I hurt people. I got in fights. I did things that were just knuckle-headed. I was not a reasonable person, and you know, I've turned my life around. I'm doing the right thing now. I'm not the same person that I was before . . .

The Applicant is very happy with his life and job. Through his involvement in AA, he is aware of the trigger that would lead to his return to drinking. He knows all that makes him happy will disappear if he takes another drink. (Gov. Ex 2, p. 2) As of August 2000 (Gov. Ex. 2), the Applicant regretted his past conduct and stated:

I have established a new way of life and have reformed from the actions of my past. I wake up today with a clear head and strong understanding of what is important to me. I love my job and my country . . . I am an alcoholic and I know that if I pick up another drink that I will hurt myself and all that I have worked for in the last 15+ months. I do not want to go back to the way that I was with my drinking and will do all in my power not to go back there. I have learned to live life sober and will continue to do so . . . I do not plan to drink at all in the future.

In February 2000, when the Applicant completed his Std. Form 86 he answered "yes" to question 24. concerning his police record related to alcohol and drug offenses and listed three arrests but failed to list three other alcohol related offenses. He listed his March 1997 and February 1998 petit larcenies and his February 1999 DWI and in response to question 26 listed the March 1998 trespassing arrest. However, he failed to list his 1993 shoplifting arrest, his February 1998 DUI, and his arrest at Marti Gras for indecent exposure.

The Applicant failed to list his 1993 shoplifting at a convenience store because he thought it was beyond the scope⁽⁶⁾ of the investigation. Although question 24 asked if the Applicant had "ever" been charged with or arrested for alcohol or drug offenses. He thought he was to list all arrests after the age of 16, and he believed this shoplifting occurred when he was 15. The Applicant does not know if his misunderstanding about listing arrests after age 16 came from what he had read before he completed the form, or from the software module when he completed the form, or something he was told by the Security Office. (tr. 72) When questioned about his arrests by the DSS special agent, the Applicant chose to reveal the shoplifting out of an abundance of caution still believing it to be beyond the scope of inquiry. In response to question 43, General Remarks, the Applicant stated he was not positive of the exact dates but estimated as best as possible as to when the events occurred.

When the Applicant was completing the paperwork he wanted to make sure he got all the dates and incidents right and to make sure he recorded everything. He talked with his father about his past arrests and also went through the documents and personal records stored in his apartment and also those stored at his father's home. The Applicant told his alcohol counselor he was completing the paperwork and wanted to make sure everything was correct. His counselor told the Applicant he(the counselor) knew someone who could run a check of the Applicant's police record. (tr. 27) A check of the Applicant's records failed to reveal the February 1998 DUI arrest. The Applicant did not believe he had to list the arrest because of the lack of a record. In his August 2000 interview with the DSS special agent he was asked for more detail about this arrest, which he disclosed.

When he completed his Std. Form 86, he was under the impression that he was to list arrests that were on his police record and he had made numerous calls trying to get information concerning his February 1998 DUI and was told there was no record of him in the system. He failed to list the 1998 DUI because there was no record of it when he went to court for his 1999 DWI and no record of it appeared when a record check was made prior to him completing the form.

(tr. 39) He failed to list his Marti Gras incident because he forgot about it when he completed the form. He did not remember the incident until asked about it during a Defense Security Service (DSS) interview. His memory of the arrest was non-existent, but did not believe he was charged or convicted of anything. He acknowledged he spent the night in the drunk tank and was released the next day. The Applicant, now knowing the security investigation process better, wishes he had provided more detail when he first submitted his Std. Form 86.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Alcohol Consumption (Guideline G) The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include: E2.A7.1.2.

1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)
4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (E2.A7.1.2.4.)
5. Habitual or binge consumption of alcohol to the point of impaired judgment. (E2.A7.1.2.5.)

Conditions that could mitigate security concerns include: E2.A7.1.3.

2. The problem occurred a number of years ago and there is no indication of a recent problem. (E2.A7.1.3.2.)
3. Positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)
4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (E2.A7.1.3.4.)

Criminal Conduct (Guideline J) The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

a. The criminal behavior was not recent.

f. There is clear evidence of successful rehabilitation.

Personal Conduct (Guideline E) The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include: E2.A5.1.2.

2. The deliberate omission, concealment, or falsification of relevant and material 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. (E2.A5.1.2.2.)

Conditions that could mitigate security concerns include: E2.A5.1.3.

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline G: Alcohol Consumption. From 1991 until April 1999, the Applicant had a serious problem with alcohol. The Applicant's alcohol problems started in high school when he drank due to peer pressure in social settings. It progressed to the point that, by April 1999, just prior to his stopping drinking, he was binge drinking (DC 5), drinking heavily for days--at times consuming 40 beers--and drinking to the point of blackouts. Much of his memory about what happened during this time is gone. Disqualifying Conditions (DC) 1⁽⁷⁾ and 5⁽⁸⁾ apply.

Before becoming sober he was arrested numerous times. He was arrested for shoplifting in 1993, March 1997, and February 1998. In February 1998, he was arrested for DUI. A year later--February 1999--he was arrested for DWI. His BAC at the February 1999 arrest was .22%, which indicates he was a maintenance drinker supporting his claim he was daily drinking heavily. His last arrest occurred in the Spring of 1999 during Mardi Gras. During 1994 and again from April 1999 until December 1999, the Applicant received treatment from a Licensed Clinical Social Worker for a condition diagnosed, in part, as alcohol abuse making DC 4⁽⁹⁾

applicable.

There is no doubt the Applicant had a serious drinking problem as of April 19, 1999, the date of his last drink. Since that time he has attended counseling, participated actively in AA for two years, and has remained sober. He been sober for more than three years, which although not the distant past, is sufficient for me to find it is not recent and there is no indication of a recent problem. Mitigating condition (MC) 2-(10) applies.

The LCSW last saw the Applicant in June 2002 and last talked with the Applicant in July 2002. The counselor's substance abuse evaluation stated the Applicant has developed into a healthy, responsible, and mature individual, has accomplished all of the tasks expected to be completed to ensure long-term recovery from alcoholism, and has the support of family, friends, and co-workers.

From April 1999 through the Spring of 2001, the Applicant was very active in AA, attending meetings almost daily, attending the AA world convention, setting up AA banquets, and helping other AA groups to do likewise. He is currently not attending meetings, but still has an AA sponsor whom he periodically talks with. I do not think the Applicant's lack of current attendance in AA detracts from the fact that he lives his life according to the principles learned in AA. He has taken what works in AA and successfully moved on with his life. Additionally, the Applicant has others--family, friends, AA members, and counselor--who he can talk with should the need arise. Through his involvement in AA, he is aware of the trigger that would lead to his return to drinking. He knows that all that makes him happy will disappear if he takes another drink.

Since April 1999, the Applicant has attended treatment, actively participated in AA, has a favorable prognosis, and has maintained his sobriety. MC 4-(11)

applies.

The Applicant has changed his life style and understands the impact of having a single drink. Should he chose to drink again, he understands this entire life would be ruined. When he was drinking, he was completely miserable, sick, getting into fights and hurting people, not knowing what he had done the night before. He has since turned his life around and now doing the right thing. He is very happy with his life and job. He spends his time exercising, reading, studying, taking university courses, enjoying the out doors, and no longer associates with his college buddies. He has established a new way of life and has reformed from his past actions. He now wakes with a clear head and strong understanding of what is important to him. He loves his job and knows he is an alcoholic and knows the effect of having another drink, and does not want to return to his previous lifestyle. He has no intention of drinking in the future. These are all indicative of positive changes in behavior supportive of sobriety and therefore MC 3-(12) applies.

Because MC 2, 3, and 4 apply, I find for the Applicant as to SOR paragraph 1 and subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., and 1.n.

The Government has satisfied its initial burden of proof under Guideline J, (Criminal Conduct). Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about the person's judgment, reliability, and trustworthiness. The Applicant was arrested seven times, four for the minor crimes of shoplifting and trespass, but also for the serious crimes of DUI, DWI, and indecent exposure. Additionally, in April 1998, he failed to abide by the restrictions set forth in his suspended jail sentence which required him to stay out of certain convenience stores for this he was arrested in May 1998 and charged with criminal trespass. The 1998 convenience store arrest also lead to a June 1998 show cause summons in which he was found guilty of two counts of contempt, had to pay court costs and serve 44 days in jail. DC a.-(13) and b.-(14) apply.

All of the Applicant's arrests occurred when the Applicant was either in high school or during his first three years of college. The Applicant's two most recent arrests both occurred in February 1999, more than three years ago. Again, although not the distant past, it is sufficiently remote for MC a.-(15) to apply. As previously stated the Applicant has made a very remarkable change in his lifestyle. He has established a new way of life and has reformed from his past actions. He understands what is important to him, loves his job, and--acknowledging he is an alcoholic--know the effect

should he resume drinking. He does not want to return to his previous lifestyle and has no intention of drinking in the future. He no longer goes to bars or clubs and no longer associates with his old drinking friends. The Applicant's counseling, AA involvement, change of life style, change of friends, and habits are all indicative of positive changes in behavior evidencing successful rehabilitation. Therefore, MC f. [\(16\)](#) applies.

Additionally, the arrests occurred when the Applicant was 15 to 21 years old. Although the Applicant was age 21--when he was last arrested and when he last drank alcohol--is an age of maturity, however the age is not so advanced as to say youth and immaturity did not play a role in his drinking. I find for the Applicant as to SOR subparagraphs 2.a., 2.b., and 2.c.

As subsequently explained, I find the Applicant did not deliberately omit, conceal, or falsify relevant and material facts on his personnel security questionnaire. I find there was no violation of Title 18, United States Code § 1001 and find for the Applicant as to SOR subparagraph 3.a .

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security.

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, or in other official matters is a security concern. Thus, a falsification must be deliberate, and the falsified information must be material. It is deliberate if it is done knowingly and willfully. An omission concerning an arrest is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, or misunderstood the question.

When the Applicant answered Question 24 on his Std. Form 86 he listed his March 1997 shoplifting, his February 1998 shoplifting, and his February 1999 DWI, but failed to list his 1993 shoplifting, his February 1998 DUI, which occurred in another state, and his February 1999 Mardi Gras arrest. Although failing to list these three arrests, [\(17\)](#) the Applicant did not deliberately omit, conceal, or falsify relevant and material facts.

The Applicant's heavy, daily drinking affected his memory to the point he suffered from "blackouts." His blackouts and memory loss resulted in much of his past memories being lost and what remains is a blur. He has no first-hand memory of portions of his past, but knows of past events only second hand from what others have told him. The Applicant did not list his 1999 Mardi Gras arrest because he forgot about it until questioned by the DSS special agent. After he was reminded of the event, he remembered he had been drinking, spent the night in the drunk tank, and was released the next day. He has no independent memory of what occurred the previous night and relies only on what his friends have told him. Although he repaid the amount of his bail, he does not believe he was charged or convicted of anything, never went before a judge, has never been contacted by the jurisdiction after he left the area. Often the claim of a faulty memory is merely an excuse, but considering the factors related to his arrest and release and his blackouts, it is understandable this arrest might have slipped his mind.

The Applicant failed to list a shoplifting arrest when he was 15 years old believing it was outside the scope of the inquiry. While some of the questions on the Std. Form 86 restrict themselves to the prior 7 years or since age 16, Question 24 does not restrict the period of inquiry. The question asks if the applicant has "ever" been charged with or convicted of any offense related to alcohol. Even though the question is all inclusive, the Applicant believed his shoplifting arrest at age 15 was beyond the scope of inquiry. Even though the Applicant could not pin point where his misunderstanding originated--he thought it might have come from what he had read before he completed the form, or from the software module when he completed the form, or something he was told by the Security Office--his explanation is accepted.

The Applicant listed a 1999 DWI on his Std. Form 86, but failed to list his February 1998 DUI. When completing Question 24., the Applicant was under the incorrect impression he was to list only arrests which were part of his police

record. Even though the question is titled "Your Police Record - Alcohol/Drug Offenses" it encompasses more than an individual's current police record for it asks if the individual had ever been arrested or convicted. The Applicant had been arrested for the 1998 DUI, went to court, pleaded guilty to the DUI, and was told he was not on the docket. Following his court date, he made numerous calls trying to get information concerning the DUI and was told there was no record of him in the system. As he was completing the Std. Form 86, he asked his counselor to assist in having a check run of the Applicant's police record to assist him in completing the form. When the check failed to reveal his DUI, the Applicant was under the mistaken belief he did not have to list the arrest because of the lack of a record. When later questioned about it he fully disclosed it in his first interview in August 2000.

Because acting under an erroneous belief, the Applicant did not deliberately omit, conceal, or falsify relevant and material facts on his personnel security questionnaire. The Applicant did not wilfully falsify his response to Question 24. However, even if it was a willful falsification, MC 2-⁽¹⁸⁾ would apply since the falsification was an isolated incident being a response to a single question on a single questionnaire completed in February 2000, which is approximately two and a half years ago and therefore not recent, and the individual has subsequently provided correct information voluntarily. I find for the Applicant as to SOR subparagraph 3.a.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Alcohol (Guideline G): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Subparagraph 1.h.: For the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: For the Applicant

Subparagraph 1.k.: For the Applicant

Subparagraph 1.l.: For the Applicant

Subparagraph 1.m.: For the Applicant

Subparagraph 1.n.: For the Applicant

Paragraph 2 Criminal Conduct (Guideline J): FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Paragraph 3 Personal Conduct (Guideline E): FOR THE APPLICANT

Subparagraph 3.a.: For the Applicant

DECISION

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

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. A "blackout" being a state in which a person appears to be fully awake and conscious, but later has no memory of the events which had occurred. A "blackout" being different from "passing out" which occurs when a person fall sleep after having had too much to drink.
3. Mardi Gras 1999 ended at midnight Tuesday, February 16, 1999.
4. The Applicant's abstinence now exceeds 18 months, but this was the token he received when in AA.
5. When he was drinking, all he wanted to do was go to bars and clubs. (tr. 95)
6. While some of the questions on the Std. Form 86 restrict themselves to the prior 7 years, i.e., Questions 16, 19, 25, 26, 29, 30, 33, 34, 35, 36, 37, 38, 40, and Question 27., concerning illegal drug use, restricts the period of inquiry to the last 7 years or since age 16, Question 24 has no restrictions on the period of inquiry.
7. 1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)
8. 5. Habitual or binge consumption of alcohol to the point of impaired judgment. (E2.A7.1.2.5.)
9. 4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (E2.A7.1.2.4.)
10. MC 2. The problem occurred a number of years ago and there is no indication of a recent problem. (E2.A7.1.3.2.)
11. MC 4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (E2.A7.1.3.4.)
12. 3. Positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

13. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
14. DC b. A single serious crime or multiple lesser offenses.
15. MC a. The criminal behavior was not recent.
16. MC f. There is clear evidence of successful rehabilitation.
17. The Applicant also failed to list his June 1998 show cause summons for entering a type of store from which he had been barred. But the SOR did not allege this failure, and it was, therefore, not considered in the determinative process of this decision.
18. MC 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)