

KEYWORD: Alcohol; Criminal Conduct; Personal Conduct

DIGEST: Applicant is 48 years old, has worked as an engineer for the same federal contractor for 25 years, and held a security clearance for most of that time. Applicant has a long history of alcohol abuse. He has been diagnosed twice as alcohol dependent and he has vowed at least twice to never drink again. He has six driving while intoxicated (DWI) arrests and numerous other offenses related to his alcohol consumption. He has abstained from alcohol consumption for periods of time, but resumes drinking. Applicant was advised in writing by his security office that he only had to list his criminal offenses for the past 10 years on his security clearance application. Applicant failed to mitigate the alcohol consumption and criminal conduct security concerns under Guidelines G and J, but has mitigated the personal conduct concerns under Guideline E. Clearance is denied.

CASENO: 02-29139.h1

DATE: 03/30/2006

DATE: March 30, 2006

---

In re:

-----  
SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-29139

**DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

**APPEARANCES**

## **FOR GOVERNMENT**

Melvin Howry, Esq., Department Counsel

## **FOR APPLICANT**

Kenneth M. Roberts, Esq.

## **SYNOPSIS**

Applicant is 48 years old, has worked as an engineer for the same federal contractor for 25 years, and held a security clearance for most of that time. Applicant has a long history of alcohol abuse. He has been diagnosed twice as alcohol dependent and he has vowed at least twice to never drink again. He has six driving while intoxicated (DWI) arrests and numerous other offenses related to his alcohol consumption. He has abstained from alcohol consumption for periods of time, but resumes drinking. Applicant was advised in writing by his security office that he only had to list his criminal offenses for the past 10 years on his security clearance application. Applicant failed to mitigate the alcohol consumption and criminal conduct security concerns under Guidelines G and J, but has mitigated the personal conduct concerns under Guideline E. Clearance is denied.

## **STATEMENT OF THE CASE**

On September 9, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline G (alcohol consumption), Guideline J (criminal conduct), and Guideline E (personal conduct).

In a sworn statement, dated September 30, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted SOR allegations ¶¶ 1a-1.k under Guideline G, and SOR allegations ¶¶ 2.a, 2.c, 2.d, 2.e and 2.g, under Guideline J. He denied the allegations in SOR ¶¶ 2.b and 2.f under Guideline J, and ¶¶ 3.a and 3.b under Guideline E.. The case was assigned to me on November 25, 2005. A notice of hearing was issued on January 19, 2006, scheduling the hearing for February 8, 2006. The hearing was conducted as scheduled. The government submitted 26 exhibits that were marked as Government Exhibits (GE) 1-26. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, had three witnesses testified for him, and submitted 21 exhibits that were marked as Applicant's Exhibits A-U. The exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 1, 2006.

## PROCEDURAL ISSUES

Applicant's social security number was verified by Department Counsel with Applicant and a pen and ink change was made to correct it on the SOR. Department Counsel moved to amend SOR ¶ 1.g to accurately reflect the location where the incident occurred. Applicant did not object and the SOR was amended.

## FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 48-year-old engineer who has worked for the same federal contractor for 25 years. He has held a security clearance since at least 1988. He has been married for 25 years and has a teenage daughter.

Applicant started drinking alcohol at the age of approximately thirteen.<sup>(2)</sup> He and his friends would raid their parents' liquor cabinets and have drinking parties once a week.<sup>(3)</sup> By the time he was 15 he had a fake identification card that would allow him to be served alcohol and he would go to bars several times a week and get drunk.<sup>(4)</sup> At the age of 17 he joined the Navy and began drinking daily and getting drunk nightly.<sup>(5)</sup> He attended an alcohol abuse treatment program while in the Navy in 1976.<sup>(6)</sup> Applicant admitted in a statement made on January 18, 1988:

I began using alcohol while I was in my teens. With some periods of abstinence and/or use in moderation, I would say that I have abused alcohol almost constantly since my teens. While I was in the Navy, from 74-77, I drank almost daily and got drunk several times a week. After my discharge in 77, while in [States 1, 2, and 3], I drank regularly, but with control, getting drunk on an occasional weekend. When I went to [State 4] in 80, I began drinking to excess, almost nightly, and getting drunk several times a week. This pattern continued until my last arrest in Feb 85. I then ceased drinking for two or three months. I was then sent by my employer to work in [State 5]. I stayed in [State 5] for two or three months. During that two or three-month, I began to use alcohol again and only rarely overindulged on a weekend. When I returned to [State 3] in Oct 85, I voluntarily entered an alcohol rehabilitation program .... I also joined Alcoholics Anonymous and continue to participate in that program. I never used alcohol while on duty or at work. Since 28 Oct 85, I have completely abstained from the use of alcohol. I have turned my life completely around and intend never to use alcohol again.<sup>(7)</sup>

When Applicant was a minor, on July 27, 1974, he was arrested for grand larceny, a felony, resisting arrest, reckless driving and driving without a driver's license. On August 22, 1974, he pled guilty to a reduced charge of unauthorized use of a motor vehicle and was granted a one year conditional discharge. He was found guilty of reckless driving and driving without a driver's license and was given an unconditional discharged for both charges. The resisting arrest charge was dismissed.

On November 18, 1974, Applicant was arrested and charged with possession of stolen property, reckless endangerment, and possession of a weapon. On November 21, 1975, all the charges were reduced to reckless endangerment and Applicant was granted Adjudgment in Contemplation of Dismissal. On May 21, 1976, the charges were dismissed.

On February 11, 1975, Applicant was arrested for possession of stolen property, a felony, unauthorized use of a motor vehicle and criminal impersonation. Applicant pled guilty to a reduced charge of false identification, was fined \$10.00 and given Adjudgment in Contemplation of Dismissal for this charge. The other charges were dismissed.

Applicant was arrested on March 20, 1980, for assault and battery. He was fined approximately \$200. On September 24, 1981, Applicant was arrested for Driving While Intoxicated (DWI). No information regarding the disposition of this charge was provided. On January 4, 1983, he was arrested for DWI, hit and run and property damage. He was fined approximately \$750 and ordered to do 15 days of public work service, and was put on probation for three years. His driver's license was suspended for one year. On April 29, 1983, he was arrested for disturbing the peace. He was fined approximately \$150 and sentenced to one year probation.

On April 28, 1984, Applicant was arrested for DWI. On February 28, 1985, he was arrested for attempting to flee and elude a pursuing law enforcement vehicle (felony), aggravated assault (felony), and DWI and having a prior DWI conviction within a 60-month period. The April 28, 1984, offense was included in the disposition of this later case, but no other information was provided regarding that offense. Applicant was observed speeding and went through a stop light without stopping. The police attempted to stop Applicant and he continued to drive through residential neighborhoods in an erratic manner. Two police units attempted to block his vehicle and he veered around them. Three police vehicles were now in pursuit with emergency equipment on. Applicant's vehicle crossed the center line and was traveling on the wrong side of the road for a period. Applicant ran into one of the police cars several times. Applicant's vehicle jumped a curb, drove across a field and came back onto a road. He again hit a police car forcing it into a curb where it stopped. Applicant continued to drive erratically through residential areas until he reached his home. He ran into his house. Two officers were required to subdue him and five officers were required to place him in a police car because he was fighting them. The police officer whose car was run off the road suffered knee, back and neck injuries. (8)

In his presentence report Applicant admitted his father was an alcoholic and his stepfather was a heavy drinker. On April 7, 1986, he pled guilty and was fined approximately \$4,073, sentenced to three years supervised probation, 12

months in the County Rehabilitation Center and ordered to participate in antabuse therapy and abstain from drinking alcohol. Applicant was permitted to serve his sentence in a work release program.

From approximately February to April 1985, at the suggestion of his attorney, Applicant attended a community counseling treatment program for alcohol counseling. He was diagnosed as alcohol dependent in approximately March 1985 by a Certified Alcohol Counselor.<sup>(9)</sup> Applicant admitted he did not take this counseling to heart because he had not yet come to grips with his alcohol abuse.<sup>(10)</sup>

Applicant became aware that if he was convicted of the felony charges from April 1984, he would likely lose his job. His supervisor requested that he seek treatment as alcohol was affecting his job performance.<sup>(11)</sup> He then decided to enroll in a rehabilitation program. On October 30, 1985, he voluntarily attended a Chemical Dependency Program for alcohol treatment. He was diagnosed as alcohol dependent by a certified alcohol counselor.<sup>(12)</sup> He was discharged after he successfully completed the program on November 22, 1985. His discharge treatment summary stated "[Applicant] completed treatment with an acceptance of his powerlessness over alcohol and his resolve to continue with the Alcoholic Anonymous (AA) Program."<sup>(13)</sup> He was told not to drink alcohol.<sup>(14)</sup> In January 1988, Applicant made a sworn statement and stated, "Since October 28, 1985, I have completely abstained from the use of alcohol. I have turned my life completely around and intend never to use alcohol again."<sup>(15)</sup> Applicant has not been in any other rehabilitation program since 1985 and has not attended AA since sometime in the 1980's.

In June 1995, Applicant was arrested for public intoxication. He had been drinking at a bar and decided not to drive and instead walk. It is unclear what the circumstances were regarding this charge. He paid a fine for the incident.

On November 10, 2001, Applicant had been consuming alcohol at his home. He claims his wife went to run errands and he went with her. She was driving, missed a turn and when she turned the car around it slid off the shoulder into a ditch. She received a ride home from a person who stopped to assist. Applicant remained with the car until a tow truck arrived. Once the car was retrieved Applicant moved it so it would not impede traffic. A police officer stopped and because Applicant had moved the car and obviously had been drinking, he questioned Applicant about the incident. The police report states that Applicant admitted he had been driving the car and admitted to drinking prior to driving. After he was given a field sobriety test, he recorded a .16% Breathalyzer. When he was placed under arrest he claimed he actually was not the driver, but his wife had been the driver. The police officer offered to contact his wife so she could corroborate his story, but he refused to provide a phone number to contact her.

Applicant was charged with driving while ability impaired, driving under the influence per se, and careless driving. On October 24, 2002, Applicant pled guilty to driving while ability impaired, and was fined approximately \$564. He was sentenced to 20 days in jail that was suspended, and 24 months probation. He was ordered to attend alcohol evaluation and treatment and Substance Abuse Monitoring and Evaluation & Treatment. The remaining charges were dismissed. He was required to take a Breathalyzer test daily, as part of the treatment program, so he did not drink while going through the monitoring, but resumed drinking sometime after completing the mandatory program.

When questioned at the hearing about the circumstances of the November 10, 2001 arrest, Applicant claimed he did not want the police to contact his wife because he was concerned about his daughter. Applicant could not provide a plausible or reasonable explanation why he would not allow the police to speak to his wife if she had been the driver and able to corroborate his story. Applicant's explanation was not credible. The original information provided by Applicant to the police officer and his latter story are inconsistent and suspect.

Applicant continues to drink alcohol and in May 2002 he considered himself a moderate drinker who consumed 2-3 drinks 4-5 nights a week. [\(16\)](#) Even after being arrested for his 6<sup>th</sup> DWI/DUI he continued to drink. He claims that he totally abstained from alcohol in the 2003 time frame because he knew he had an issue with his security clearance and he thought it was in his best interest to refrain from drinking. Applicant currently drinks a couple of times a week and will have a glass of wine with his wife if they go out to dinner, or a beer or two while watching a ball game. [\(17\)](#) He claims his consumption varies. He does not believe he is an alcoholic, but admits alcohol has had a negative impact on his life. [\(18\)](#) He also admits alcohol has been a problem in his life. [\(19\)](#)

Applicant was evaluated by a certified alcohol counselor in June 2004, as part of his security clearance investigation. He reported to his counselor that alcoholism does not exist within his immediate family. [\(20\)](#) This is inconsistent with both his admissions on his presentence report in 1985, when he admitted his father was an alcoholic and his stepfather a heavy drinker, and the evaluation completed with regard to his second alcohol rehabilitation, where it states he has a parent who is an alcoholic. [\(21\)](#) During his 2004 evaluation he advised the counselor that he intended to remain sober. [\(22\)](#) Applicant has admitted he has resumed drinking, but it is unclear whether he has remained sober. The therapist's opinion is Applicant displayed addictive behavior and there are strong indicators that Applicant drinks "alcoholically" when he does drink. [\(23\)](#) She believed him to be sincere in his desire to remain alcohol free and his intention to remain sober. [\(24\)](#)

Applicant was examined and tested again by a psychiatrist of his own selection, on February 3, 2006, at his request in anticipation of his hearing. The doctor was provided with a copy of the SOR and Applicant's answer, ten character letters, Applicant's own summary of his background and "other material explaining the nature of this evaluation and its role in Applicant's overall determination of safety." [\(25\)](#) No other information was provided to me to specifically detail what background history or information was provided to the psychiatrist. I was not provided with the documents that the psychiatrist considered in arriving at his conclusions. In the psychiatrist's discussion he states: "The results of the Alcohol Assessment Test clearly distinguishes [Applicant's] particular profile as an individual distinct from the typical alcoholic. They would be able to drink occasionally with the kind of self-control he had." [\(26\)](#) When questioned at the hearing and asked "Now, when they used 'occasional' here, did you tell [the psychiatrist] that you had been drinking two or three drinks a night four to five times a week in the November 2001 to May 2002 time period." [\(27\)](#) Applicant's answer was "I don't believe that specifically came up." [\(28\)](#) He did remember advising that he had abstained from alcohol consumption in 2003, and that he had other periods of abstinence. He claimed his consumption varied throughout the years and he was able to abstain for periods of time. The doctor found Applicant to be:

devoid of alcohol related problems based on his history, collateral information, character and moral structure, mental status examination and the results of a well-respected psychological test designed to pick up subtle indications of alcohol dependency. Although he has had two police incidences since 1995, looking at the particulars makes it clear that he has reformed to such a degree as to render his occasional alcohol use insignificant. [\(29\)](#)

The psychiatrist clearly believed Applicant's story that he had not been driving during the 2001 incident, however, the record does not show whether the psychiatrist had the police report and all the information about the level of alcohol consumption throughout Applicant's life and not just Applicant's periods of abstinence.

Applicant's response to the question of why he would resume drinking after his diagnosis and after abstaining for periods was "I am aware of my condition and my situation." [\(30\)](#) He did not divulge what his motivation was for resuming his drinking. He states he will go out for dinner with his wife and have a glass of wine and does not see this as an issue. [\(31\)](#) He believes he is then capable of driving home. Applicant continues to consume alcohol, but admits maybe he should stop.

Applicant executed his most recent security clearance application (SF 86) on March 26, 2002 and when answering Question 21 [\(32\)](#) he failed to disclose his felony arrests as detailed in SOR ¶¶ 1.g, 2.e. and 2.g. When answering Question 24 [\(33\)](#) Applicant failed to disclose his alcohol related arrests under SOR ¶¶ 1.g, 1.h, 1. i, 1.j, and 1.k. Prior to filling out his SF 86 Applicant received a memorandum from the security office of his employer. The memorandum specifically stated with regards to questions on the SF 86: "The following questions should be answered with a ten (10) year time frame or to your 18<sup>th</sup> birthday, (whichever is shorter) to meet standards." [\(34\)](#) Applicant contacted the security office to verify that he was only to go back ten years and was assured this was correct, despite the clear language of the questions. [\(35\)](#) Applicant followed the direction of his security office and did not intentionally or deliberately fail to provide the requested information.

Applicant had an incident in March 2005 that involved his wife. They were having an argument and he reportedly pushed her while attempting to retrieve his cell phone. Their daughter called the police because she was frightened. The police charged Applicant with harassment. The charge was eventually dismissed. [\(36\)](#) Applicant claims he was not drinking at the time of the incident, but his wife was drinking. He was not sure how much she had to drink.

Applicant provided numerous character references and testimony regarding his excellent work history and commitment to security. He has never had a security violation during his history of employment. He is knowledgeable and conscientious. He is an asset to the organizational and an integral part of the success of the company. I have read through all of the exhibits and have considered them.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, Guideline J, pertaining to criminal conduct, and Guideline E, pertaining to personal conduct with their respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(37)</sup> The government has the burden of proving controverted facts.<sup>(38)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(39)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.<sup>(40)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(41)</sup>

No one has a right to a security clearance<sup>(42)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(43)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(44)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(45)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline G-Alcohol Consumption-a security risk may exist because 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.

Guideline J-Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government established a *prima facie* case for disqualification under Guidelines G, and J. The government failed to establish a *prima facie* case for disqualification under Guideline E.

Based on all the evidence I considered all the disqualifying conditions and especially considered Alcohol Consumption Disqualifying Condition (AC DC) 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*), and conclude it applies. Applicant has six DWI/DUI arrests and a public intoxication arrest from September 1981 to November 2001. Applicant continues to consume alcohol. His other offenses that were related to his alcohol use include hit and run, property damage, attempting to flee and elude a pursuing law enforcement vehicle, aggravated assault, public intoxication and careless driving.

I have considered all the mitigating conditions and especially considered Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (*The alcohol-related incidents do not indicate a pattern*), AC MC E2.A7.1.3.2 (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3 (*Positive*

*changes in behavior supportive of sobriety*). Applicant's alcohol-related incidents indicate a pattern. From 1981 to 2001, he has had six DWI/DUI arrests and numerous other offenses that are alcohol-related. The majority of the incidents occurred prior and up to February 1985. The incident on February 28, 1985 was extremely aggravated and finally shocked Applicant into participating in a rehabilitation program. He seemed to grasp the enormity of his situation and came to grips with his alcohol dependency vowing never to use alcohol again. He abided by this commitment for about three years and then started to drink again. He did not provide an explanation for what motivated him to resume his drinking, but he did and had two more alcohol-related incidents, in 1995 and 2001.

Despite his admissions that alcohol has had a negative impact on his life, he does not have the resolve to abstain from it permanently. Although, at least by his admissions, that were not corroborated, he is able to abstain from drinking for periods of time, he consistently starts again. Even after being arrested for his 6<sup>th</sup> DUI and fully aware of the impact it would have on his life he continued to drink 2-3 drinks a day 4-5 times a week. He then abstained for a period of time and resumed drinking a lesser amount. Applicant has a long history of alcohol use and abuse. The pattern of his abuse is consistent. In his January 1988 statement he described his drinking pattern of being able to abstain and then drink again, decreasing the quantity and then increasing. This has remained a constant pattern. He has stated more than once he intends to never drink again, but he does. I have considered and weighed all the evidence presented, included all the alcohol evaluations, character letters, and employment history. Applicant's behavior regarding his alcohol consumption is too unpredictable, and his motivation for resuming drinking is unclear. Although his last DUI was in 2001, because he has continued his pattern of drinking and has not shown positive changes supportive of sobriety, I find the fact that the offense occurred five years ago to have little weight. I find that AC MC E2.A7.1.3.1, AC MC E2.A7.1.3.2, and AC MC E2.A7.1.3.3 do not apply. I find Applicant has failed to mitigate the security concerns under Guideline G.

Based on all of the evidence, I have considered all the disqualifying conditions and especially Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*), and conclude both apply. Applicant has been arrested, charged, and convicted of numerous offenses, as detailed above.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). Although the offenses detailed in SOR ¶¶ 2.e, 2.f, and 2.g, occurred when Applicant was a minor almost 30 years ago, his most recent criminal offense occurred in 2001. Most of Applicant's other criminal behavior is alcohol-related. Applicant's last arrest and conviction alleged in the SOR was in 2001, a period of more than five years. I find CC MC E2A10.1.3.1 does not apply because there is a long history and a demonstrated pattern of criminal behavior. I find that the frequency that Applicant has been involved in criminal violations negates the applications of CC MC E2A10.1.3.2. Applicant's criminal conduct is directly related to his alcohol consumption. Until Applicant makes positive changes regarding his alcohol consumption, there is not clear evidence that he is successfully rehabilitated. Applicant has exhibited a yo-yo effect in his sobriety. Although he does not always get in trouble when he drinks, his behavior is too unpredictable. I have considered this fact when reviewing his conduct within the "whole person" concept. Applicant failed to mitigate Guideline J, criminal conduct.

Based on all the evidence, I do not find that any of the Personal Conduct Disqualifying Conditions apply in this case. There was no evidence presented that Applicant deliberately failed to divulge required information on his SCA. To the

contrary, he received notification in writing from his security office that told him to list only offenses for the last 10 years or from his 18<sup>th</sup> birthday, whichever was shorter. He verified this by contacting the security office and it was confirmed. I find for Applicant under Guideline E, personal conduct.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the testimony and documents provided, in addition to the demeanor and credibility of the Applicant. I considered the whole person and find Applicant failed to mitigate the security concerns regarding Guidelines G, alcohol consumption and Guideline J, criminal conduct. I find for Applicant regarding Guideline E, personal conduct. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline G, J, are decided against Applicant and Guideline E is decided for Applicant.

### **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 THE APPLICANT**

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: Against the Applicant

Subparagraph 1.I: Against the Applicant

Subparagraph 1.j: Against the Applicant

Subparagraph 1.k: Against the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Subparagraph 2.g: Against the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph 3.a: For the Applicant

Subparagraph 3.b: For the Applicant

**DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. GE 9 at 130.
3. *Id.*
4. *Id.*
5. *Id.*
6. GE 15.
7. GE 21 at 2-3.
8. GE 10 at 127.
9. GE 14
10. Tr. 112.
11. GE 10 at 135.
12. GE 20; GE 23.

13. GE 20.

14. Tr. 101

15. GE 21 at 3.

16. GE 6; Tr. 75.

17. Tr. 78-79.

18. Tr. 116.

19. Tr 108.

20. GE 3 at 2.

21. Ge 10 at 129; GE 14 at 1.

22. GE 3 at 2.

23. *Id.*

24. *Id.*

25. AE D.

26. *Id.* at 5.

27. Tr. 102

28. *Id.*

29. AE D at 6.

30. Tr. 110.

31. Tr. 108.

32. Question 21 asks: *Your Police Recored-Felony offenses Have you ever been charged with or convicted of any felony offense? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Control Substances Act for which the court issued an expungement order under teh authority of 212 U.S. C. 844 or 18 U.S.C. 3607.*

33. Question 24 asks: *Your Police Record-Alcohol/Drug Offenses Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the record. The single exception to this requirement is for certain conviction s under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.*

34. Answer.

35. Tr. 80-82.

36. GE 26, AE Q and R. This incident was not alleged as part of the SOR and will not be considered for disqualifying purposes, but will be considered as part of the "whole person" analysis.

37. ISCR Case No. 96-0277 at p. 2 (App. Bd. Jul 11, 1997).
38. ISCR Case No. 97-0016 at p. 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
39. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
40. ISCR Case No. 94-1075 at pp. 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
41. ISCR Case No. 93-1390 at pp. 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
42. *Egan*, 484 U.S. at 531.
43. *Id.*
44. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
45. Executive Order 10865 § 7.