KEYWORD: Alcohol: Criminal Conduct; Financial; Personal Conduct DIGEST: Applicant is 40 years old and works for a federal contractor. He has a history of alcohol-related offenses and other criminal conduct that spans an 18-year period. When he completed his 2003 security clearance application, he did not disclose one of the offenses and an alcohol treatment program. In addition, he has accrued significant delinquent debt over the years that he has been unable or unwilling to manage or resolve. He failed to mitigate the security concerns raised by his alcohol consumption, criminal conduct, financial considerations and personal conduct. Clearance is denied. CASE NO: 04-09022.h1 DATE: 05/25/2006 DATE: May 25, 2006 In re: SSN: -----Applicant for Security Clearance ISCR Case No. 04-09022 **DECISION OF ADMINISTRATIVE JUDGE** SHARI DAM **APPEARANCES** 

# Jennifer I. Campbell, Esq., Department Counsel

FOR GOVERNMENT

#### FOR APPLICANT

Pro Se

#### **SYNOPSIS**

Applicant is 40 years old and works for a federal contractor. He has a history of alcohol-related offenses and other criminal conduct that spans an 18-year period. When he completed his 2003 security clearance application, he did not disclose one of the offenses and an alcohol treatment program. In addition, he has accrued significant delinquent debt over the years that he has been unable or unwilling to manage or resolve. He failed to mitigate the security concerns raised by his alcohol consumption, criminal conduct, financial considerations and personal conduct. Clearance is denied.

#### STATEMENT OF THE CASE

On November 25, 2005, the Defense Office of Hearings and Appeals issued a Statement of Reasons (SOR) to Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guidelines G (Alcohol Consumption), J (Criminal Conduct), F (Financial Considerations), and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On December 1, 2005, Applicant filed an Answer, admitting most of the allegations contained in the SOR, and elected to have the case decided on the written record in lieu of a hearing. On March 17, 2006, Department Counsel prepared a File of Relevant Material (FORM), along with Government Exhibits (GX) 1-26, and mailed Applicant a complete copy on March 20, 2006. Applicant had 30 days from the receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on April 11, 2006, and did not submit any additional information. This case was assigned to me on May 16, 2006.

#### **PROCEDURAL MATTERS**

The Government filed a Motion to Amend the SOR, and gave notice of it to the Applicant in the FORM that was mailed to Applicant on March 20, 2006. Applicant did not file an objection thereto. Hence, the Motion is granted and the last sentence of SOR Paragraph 4.a is amended to state "You deliberately failed to disclose that information as set forth under subparagraph 1.d."

### FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR, I make the following additional findings of fact:

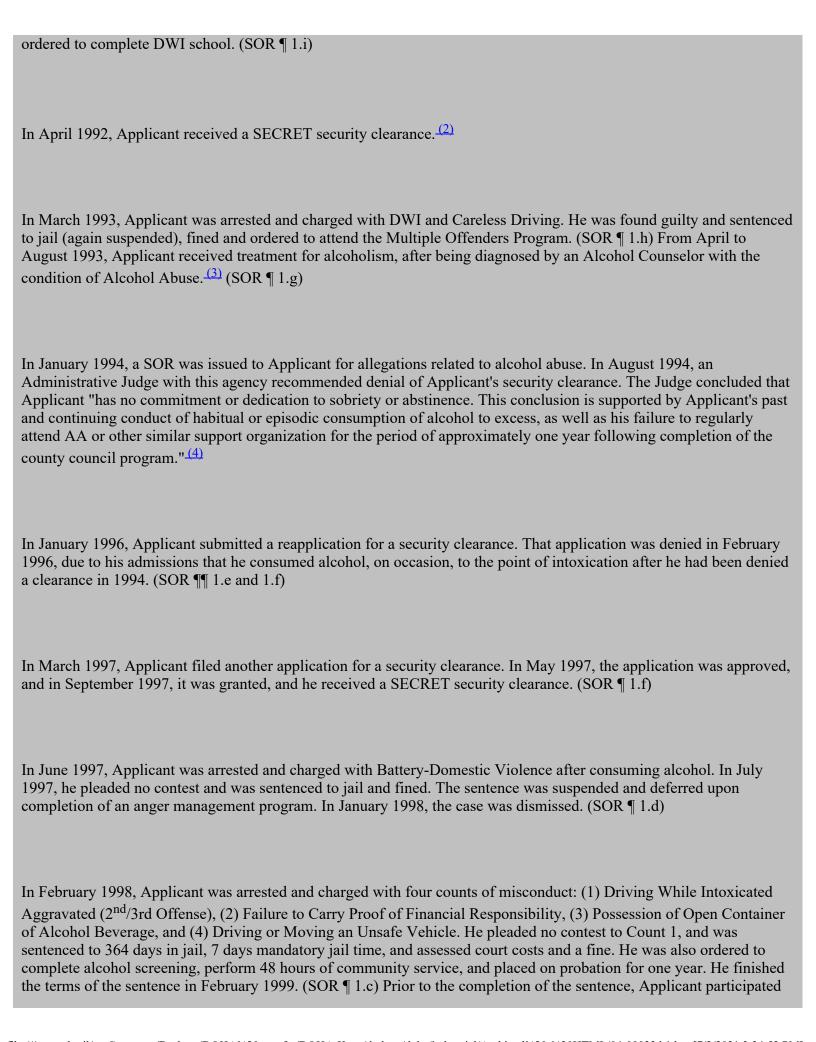
Applicant is 40 years old and employed as a graphics specialist for a federal contractor. He submitted a security clearance application (SCA) to renew his clearance in June 2003. He has worked for various contractors since 1991. Prior to that time, he served in the armed forces for several years during the 1980's.

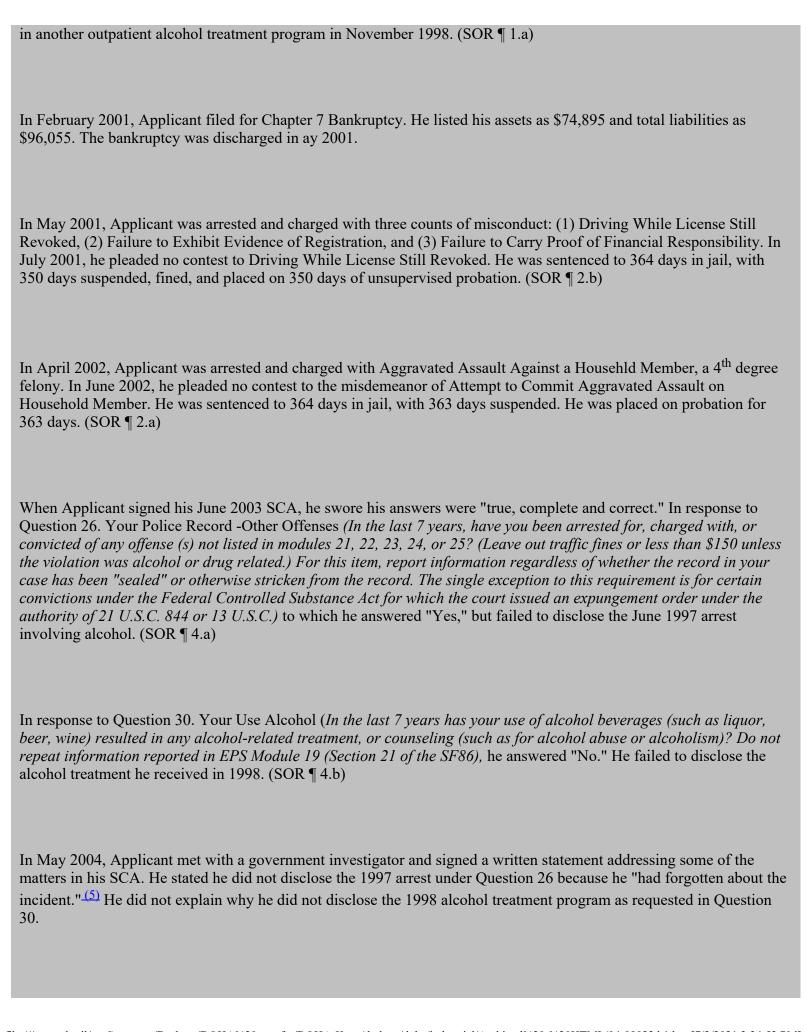
Applicant admitted that he consumed alcohol, to the point of intoxication, from 1985 to August 1993. (SOR ¶1.1).

In April 1985, Applicant was charged with Allowing Self to be Served Alcohol as a Minor. He was found guilty and fined. He was 21 years old at the time. (SOR  $\P$  1.k)

In December 1988, Applicant was charged with Driving While Intoxicated (DWI). In January 1989, he participated in an alcohol treatment program, sponsored by the armed forces. (1) The case was later dismissed. (SOR ¶ 1.j)

In May 1990, Applicant was arrested and charged with three counts of misconduct: (1) DWI, (2) Carless Driving, and (3) Immediate Notice of Accident. He pleaded guilty, and was sentenced to jail (the sentence was suspended), fined, and





In regard to his use of alcohol, Applicant said, "Since about May 01 after my arrest for driving on a revoked license I drink beer on the weekends usually between Friday evening and Saturday. I might consume a twelve pack of beer each of those days . . . I intend to continue my current drinking habits and that is to drink responsibility." (6) He does not drink and drive because he does not want to be arrested and go to prison.

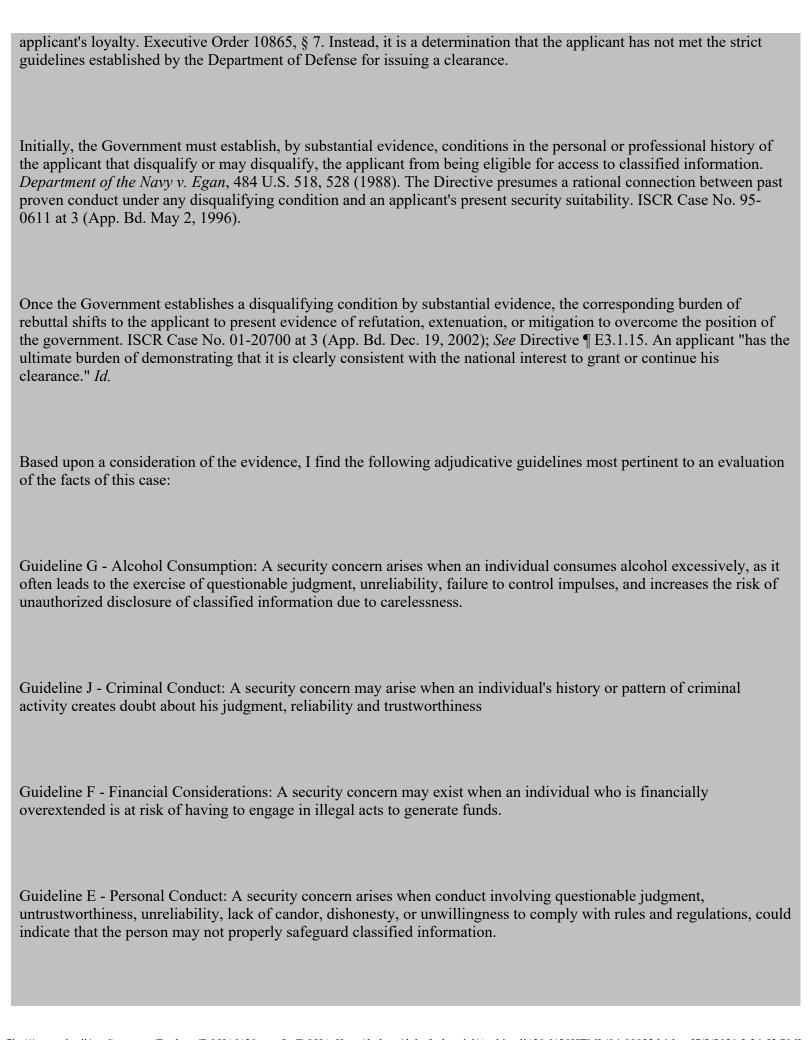
Paragraph 3 of the SOR alleged that Applicant's delinquent debts, which accrued since the May 2001 bankruptcy discharge, total \$7,627. Applicant admitted owing the debts contained in ¶¶ 3.b through 3.k. They consist of two unpaid judgments, utility bills, credit card debt, and other miscellaneous outstanding bills. As of October 2005, the debts have either been placed in collection status or charged off by the creditors. None of the debts have been paid or resolved. As of ay 2004, he and his wife are able to pay their current living expenses and a few other on going debts. (8)

#### **POLICIES**

Enclosure 2 of the Directive, Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, sets forth the criteria that must be evaluated when determining security clearance eligibility. Within those guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E.2. of Enclosure of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive, Enclosure 2, ¶ E2.2.2. The decision to deny an individual a security clearance request to an individual is not necessarily a judgment of the





period of time, in particular within the last several years, which is the operative factor under AC MC E2.A7.1.3.3 (Positive changes in behavior supportive of sobriety). (4) AC MC E2.A7.1.3.4 (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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) is not applicable. He did not provide any evidence to support this condition. In fact, the evidence continues to remain to the contrary, as previously noted by an administrative judge in 1994. Accordingly, Applicant failed to mitigate the security concerns raised by his alcohol consumption, and the allegations contained in SOR ¶¶ 1.a through 1.1 under Guideline G are decided against him.

Guideline J - Criminal Conduct

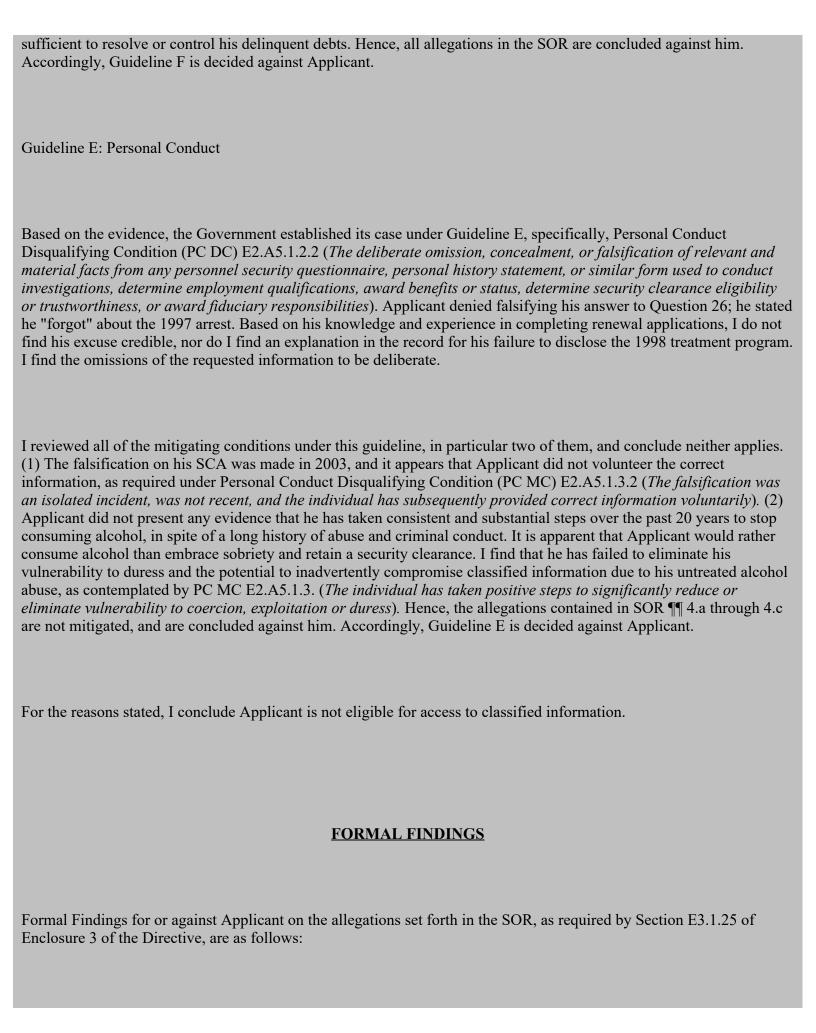
Based on the evidence, the Government established its case under Guideline J, specifically, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*). Applicant admitted the allegations of criminal conduct noted in the SOR, which consisted of one felony and multiple lesser offenses.

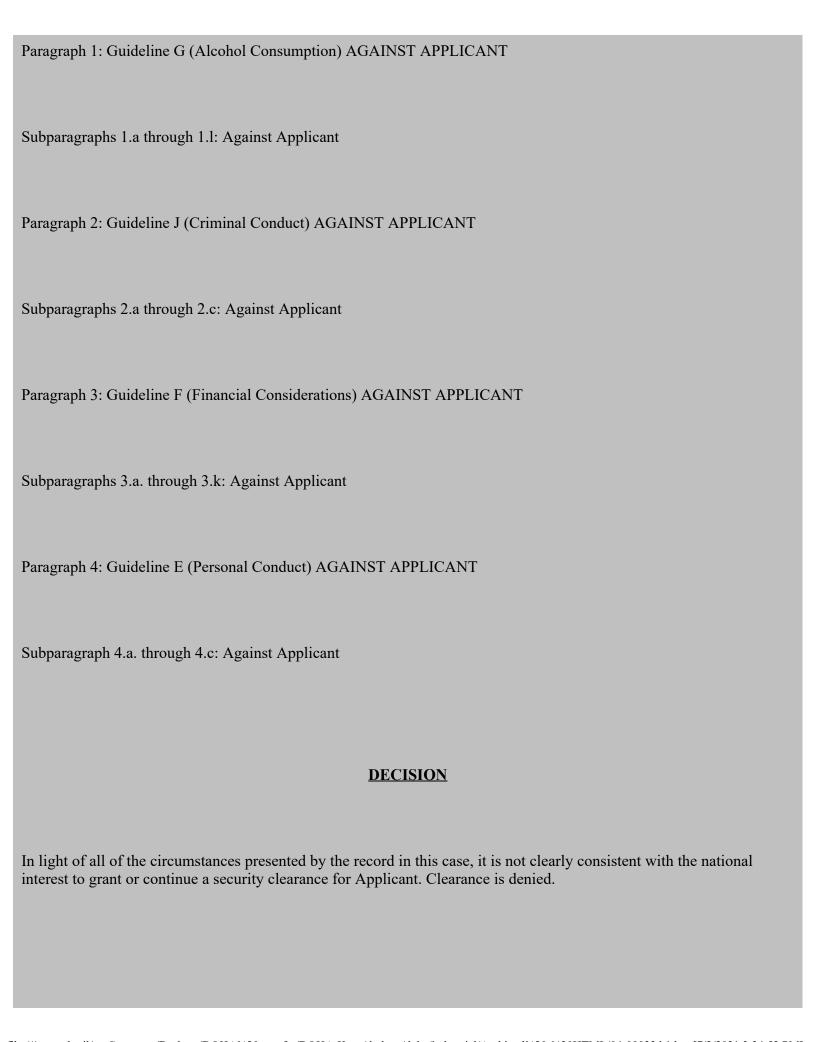
I reviewed all of the mitigating conditions under this guideline, in particular, two of them, and conclude neither applies. (1) As there are eight incidents of criminal conduct, CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), is not applicable. (2) Despite those arrests and convictions, the most recent occurring in 2002 and while holding a security clearance, he did not submit any substantive evidence addressing his alcohol problems, a major factor in his criminal conduct, or demonstrating rehabilitation; thus, CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*), cannot apply. Accordingly, Applicant failed to mitigate the security concerns raised by his criminal conduct, and the allegations contained in SOR ¶¶ 2.a through 2.c under Guideline J are decided against him

Guideline F: Financial Considerations

The Government established its case under Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*). Applicant admitted that he has a long history of not meeting his financial obligations that began prior to filing a Chapter 7 bankruptcy in 2001, and continues to the present as noted in a current credit report. Although he is managing his current bills, he is financially unable to satisfy or resolve the delinquent debt alleged in the SOR.

I reviewed all of the mitigating conditions, in particular, Financial Consideration Mitigating Condition (FC MC) E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*), and conclude it does not apply. In 2001, Applicant filed a bankruptcy to resolve his unpaid debt. Since that discharge in bankruptcy, he has accumulated additional debts that have become delinquent over the past several years and are not being resolved, either with the help of a credit counselor or other plan





### Shari Dam

## Administrative Judge

- 1. GX 16 at 3.
- 2. GX 24 at 2.
- 3. GX 23.
- 4. GX 24 at 6.
- 5. GX 15 at 3.
- 6. *Id.* at 4.
- 7. GX 5.
- 8. GX 15 at 6.