DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Melvin Howry, Esquire, Department Counsel
For Applicant: *Pro se*

January 14, 2011

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is granted

Statement of the Case

On June 8, 2010, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR on July 16, 2010, and requested a hearing. The case was assigned to me on September 16, 2010, and was scheduled for hearing on October 14, 2010. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant,

continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of eight exhibits (GEs 1 through 8); Applicant relied on two witnesses (including himself) and three exhibits. (AEs A-C) The transcript (Tr.) was received on October 29, 2010.

Procedural Issues and Rulings

At the outset of the hearing, Department Counsel moved to strike subparagraph 1.d (both independently and as incorporated in subparagraph 2.c) and 1.c of 2.c of the SOR. Department Counsel also moved to add subparagraph 1.i to subparagraph 2.c of the SOR. For good cause shown, the Government's motion was granted.

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with documentation of his approved early release of his probation associated with a covered arrest and conviction. For good cause shown, applicant was granted 14 days to explore steps to obtain documentation of an early release of his probation. Department Counsel was afforded three days to respond. Within the permitted time, Applicant provided documentation of his early release from his probation conditions associated with his 2006 conviction for domestic violence. Applicant's submission was admitted as AE D.

Summary of Pleadings

Under Guideline J, Applicant is alleged to have been arrested and charged on multiple occasions between 1984 and March 2006: (a) in 1984 for possession of controlled substance and convicted; (b) in 1984 for driving with suspended license (drugs/alcohol) and convicted; (c) in 1985 for burglary; (d) in 1986 for driving under the influence (DUI); (e) in 1988 for inflict injury upon child; (f) in March 1988 for willful cruelty to a child and convicted; (g) in 1990 for felony wilful cruelty to child and convicted; (h) in 1993 for investigation for cruelty to a child, and, as a result, for violation of probation; and (i) in March 2006 for corporal injury to spouse/co-habitant/child's parent and battery: simple and convicted.

Under Guideline G, Applicant is alleged to have (a) consumed alcohol at times to excess and to the point of intoxication from his teenage years to at least 2006; (b) received outpatient alcohol abuse treatment from March 2006 to June 2006 at K facility; and (c) abused alcohol as alleged in subparagraphs 1.a, 1.c, 1.d, and 1.h (since stricken and replaced with 1.i).

Under Guideline E, Applicant is alleged to have (i) falsified material facts in a July 2004 interview with a DoD investigator re: his arrest history, and (ii) falsified material facts in an April 2007 DoD interview re: his arrest history.

In his response to the SOR, Applicant admitted the allegations covering his alleged arrests and alcohol abuse, but denied any intention to omit material facts in his DoD interviews. He added explanations to some of his answers. Responding to the

allegations covered by Guideline J, he claimed he was innocent of any burglary in connection with his alleged 1985 arrest, despite a conviction in the matter. He claimed the allegations covered by subparagraphs 1.e and 1.f are related. He claimed the child cruelty charges that resulted from a 1993 investigation were based on false allegations reported by his ex-girlfriend, and were dismissed. And he claimed his alleged March 2006 arrest and conviction on domestic violence charges are alcohol-related. In responding to the allegations covered by Guideline G, he claimed he had to stop KP treatment because of conflicts with the days and times available to him. And, in response to the allegations covered by Guideline E, he claimed again that the underlying allegations covered by Guideline E were false and dismissed.

Findings of Fact

Applicant is a 50-year-old maintenance facility technician of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant experienced a difficult childhood while growing up. He seldom saw his mother or father. (GEs 3 and 4) He has limited post-high school schooling. He attended a vocational school for six months between January and June 1997, and earned an engineering certificate. (GE 1)

Applicant married W1 in October 1981. He has one child from this marriage, and divorced his wife in September 1986. (GEs 1 and 3) His daughter from this marriage lived with W1 while growing up. Since her mother passed away, she has lived on her own. (Tr. 138-139) Applicant has not maintained any contact with this daughter. (Tr. 155)

Between 1986 and 1990, Applicant lived with a girlfriend and has two children (girls, ages 22 and 21, respectively) from this relationship. (*see* (GE 1; Tr. 154-155) One of his daughters serves in the Air Force; the other is a mother who currently does not work. (Tr. 155) Besides their two children, his girlfriend had a young son who resided with them. (*see* GE 7) He and his girlfriend separated in 1990. (GE 4)

While in high school. Applicant was introduced to alcohol. (*see* GEs 3 and 4 and AE B; Tr. 116). Between 1977 and 1985, he consumed alcohol regularly, and often to excess and to the point of intoxication. (GEs 3, 4, and 7; Tr. 116-118, 129). He quit drinking altogether in 1985 to provide a better example for his daughter and prove to himself he was not an alcoholic. (Tr. 99, 129-130) Believing at the time he was not an alcoholic and could safely drink at controlled levels, Applicant resumed drinking in 2001, mostly in social situations with W2. (Tr. 100) Within a couple of years, though, he increased his drinking to excessive levels, and to the point of intoxication. (GEs 3 and 4; AE C; Tr. 98) His medical records revealed that he and W2 consumed up to a fifth of Tequila daily between themselves while at home, and to the point of intoxication. (*see* AE C) Applicant agrees with this medical account. (Tr. 98)

Besides consuming alcohol excessively between 1977 and 1985, Applicant smoked marijuana frequently during this same period, and snorted methamphetamine as well from age 24 to age 28. (*see* GE 7) He last used methamphetamines in September 1990.

Applicant's arrest history

FBI information reports list three Applicant arrests between 1984 and 1985 on various grounds. In April 1984, he was arrested and convicted of the charge of possession of a controlled substance. (Tr. 74-75) For this charge, he was placed on 36 months probation and fined. (*see* GE 4 and 5) Shortly thereafter, in June 1984, he was arrested and charged with driving on a suspended license (drugs/alcohol). He was found guilty and sentenced to 180 days in jail, placed on three years court probation, and fined $680. (*see* GEs 3 and 7)

In June 1985, Applicant was arrested and charged with burglary. (GE 5) A vehicle on a highway that Applicant stopped to check was burglarized. Applicant denies any knowledge or responsibility for the burglary (Tr. 78), but was convicted of the charge on the apparent strength of an eyewitness's account of spotting him at the roadside scene where Applicant had stopped.

In March 1988, Applicant was arrested and charged with wilful cruelty to a child and injury to a child. (GE 5; Tr. 82-83). On the day of his arrest, Applicant and his girlfriend were arguing, which prompted a neighbor to call police. (GE 4). During their argument, Applicant noted that her young son had wet the bed. (GE 4). Applicant took the boy to the bathroom to clean up, and when he returned, he found the boy urinating on the floor. (*see* GE 4*;* Tr. 84-85, 90-91) (GE 4). Applicant was subsequently arrested by investigating police and charged with wilful cruelty to a child and injury to a child. The court found him guilty of the charges and sentenced him to 365 days in jail (suspended), placed him on five years of probation, and ordered him to obtain psychological and parental counseling. (*see* GEs 4 and 7) Applicant attended parental counseling classes for six months in 1988, and was enrolled in a drug diversion program during the same time frame. (*see* GE 7)

While still on probation, Applicant was involved in a second incident of child abuse. In 1990, Applicant was arrested at his home for spanking his son while he was still on probation for a prior arrest (Tr. 93) On the day of his arrest, he was home with the woman with whom he was living when her eight-year-old son from another relationship (Tr. 140-141) ran from the front yard of their apartment to the adjacent street. (GE 4; Tr. 90-93). Applicant pursued him and yelled at the boy to return. When the young boy returned to him as he ordered, he spanked him on the rear and directed him to return to their apartment. (GE 4). The boy obeyed Applicant, and there were no other incidents with the boy. However, the boy informed his father of what Applicant had done to him, and the police came out to Applicant's home to investigate. (GE 4). Upon taking a report of the incident from his girlfriend, investigating police arrested Applicant and charged him with felony wilful cruelty to a child and infliction of injury upon a child.

Applicant was found guilty of one count of inflicting injury upon a child. The court, in turn, sentenced him to 365 days in jail, placed him on five years of probation, and fined him. (*see* GEs 4 and 5) Applicant served eight months of his sentence in jail before being granted an early release for good behavior. (GE 4) With his release, he was permitted to continue with his probation, which he completed in May 1996. (GE 7)

Between 1991 and 1996, Applicant was assigned to a local probation officer. Records show that Applicant enrolled in counseling in September 1991 and maintained poor attendance throughout 1991 and 1992. (*see* GE 7) Periodically, he was warned by his probation officer that his missing counseling sessions could jeopardize his probation status, and would be reported to the court, if they persisted. (GE 7) Applicant was continuously admonished by his probation officer for his lack of participation in counseling. *(*GE 7) In a letter of February 1992 to his probation officer, Applicant attributed his counseling absences to poor finances. He expressed a willingness to continue his counseling when he found work, but could provide no date certain. (GE 7) His letter did not deter his probation officer from asking the supervising court to consider ordering Applicant to spend 180 days in protective custody. (*see* GE 7). In a series of minute orders in March and August 1992, Applicant was ordered to complete 300 hours of community service and was credited by the court with doing so. (GE 7). By its minute order of March 26, 1992, the supervising court continued Applicant's probation on the same terms and conditions and credited him with being in probation compliance. (GE 7)

In March 1993, police were called to Applicant's motor home to investigate a neighbor's report of a child's screams in the home. (*see* GE 7) The investigating officer first interviewed Applicant's youngest daughter (M). Accounts of the officer's interview in the investigation report reveal that M told the officer that Applicant placed her in the corner and spanked her real hard, "a whole bunch of times." (GE 7) M related that Applicant then placed her on the bed and spanked her again. Once he finished his interview with M, the officer proceeded to interview Applicant in the front yard of the location. Asked what happened, Applicant told the officer he spanked her for "lying" to him. (GE 7). He told the officer M was wearing sweat pants at the time and any audible yelling from his motor-home was likely his own resulting from a slip and fall in the motor home. (GE7) He then commented to the officer that he was on probation for physical child abuse.

After leaving Applicant, the investigating officer interviewed the informant who requested to remain anonymous. This informant described the yelling as continuous over a ten-minute period, and generally indicative of a very, very angry man. (GE 7). The investigating officer then spoke with Applicant's mother and photographed M's injuries with the assistance of Applicant's mother. M's injuries included red bruise marks on her upper buttocks at the base of her spine.

When the investigating officer confronted Applicant with his observations of M, Applicant admitted to lying to the officer in his first interview and attributed his initial false accounting of the incident with M to his fears of having his probation revoked and his being returned to jail. (GE 7) Based on his observations of M, the investigating officer

then examined Applicant's other daughter (C) for signs of hard spanking. While he did see some bruise marks on C's buttocks area, he could not determine the extremity of the marks. Although this investigating officer was able to form an opinion that Applicant had violated his probation conditions with his actions toward M, he noted Applicant's eventual cooperation and decided not to take Applicant into custody at the time, pending further investigation and a determination of Applicant's probation conditions. (GE 7)

Once the county's investigation of Applicant's actions against M in March 1993 was completed, a warrant was issued for Applicant's arrest for violation of probation associated with Applicant's 1990 child abuse conviction. (GE 7) In the state's probation revocation application, Applicant's probation officer described Applicant as a "speed user, and he abuses his children . . ." (GE 7) His probation officer recommended revocation of Applicant's probation. In an initial court hearing in April 1993, the court granted the State's preliminary motion to revoke Applicant's probation, pending the outcome of an evidentiary hearing on the motion. (GE 7). But at the scheduled evidentiary hearing (two weeks later) on the probation violation charges, the presiding court listened to the testimony of Applicant and the investigating police officers and found no probation violation. (GE 7) The court added conditions to Applicant's probation conditions: no use of corporal punishment on any child and continued counseling.

On March 2, 2006, Applicant was arrested and charged with corporal injury to his spouse and simple battery. He pled no contest to both counts and was found guilty of both counts. (GE 6) According to Applicant's account, he and W2 were experiencing family issues at the time of his arrest. She had lost her job; their two daughters were stealing from Applicant; and her son (from another marriage) had threatened Applicant physically. On the evening of his arrest, Applicant, W2, and C were at their home, and Applicant had consumed a half bottle of Tequila (or fifth) that evening. (GE 3) Applicant became intoxicated from his drinking and blacked out. He recalled going to sleep and then awaking, after which he screamed and yelled at W2 over something trivial. He recalled grabbing W2 and throwing her to the floor, but nothing more. He claims that W2 and C have not been willing to tell him any more about his action that evening, and he has no further details of his own to add of the evening's events. (GE 3) He claimed he was confused about the evening's events and was told only by arresting sheriffs' deputies that he was being arrested for domestic violence. (GE 3)

Sheriff's deputies who took a distress call from C concerning the events of March 2, investigated the incident. Upon arriving at Applicant's home, the investigating officer was told by W2 that she and Applicant were involved in an argument over a small matter when Applicant grabbed her by her upper arm and threw her to the ground. (GE 6) Applicant (according to W2) then grabbed her by the neck with his left hand and choked her. She managed to kick him in the groin/stomach area and gain her release from his clutches. After releasing her, he yelled at her: "If you don't give me my (expletive) lighter, I will (expletive) kill you." (GE 6) At this point, Applicant's daughter C tried to intervene on her mother's behalf, and was pushed backwards (uninjured by the push). Fearing for C's and her own safety, W2 picked up a baseball bat and yelled at Applicant to leave the room. Applicant complied until police arrived. Asked for her account of the events of

March 2 by the investigating officer, C corroborated her mother's account. (GE 6) In addition to obtaining statements from the principals present at the March 2 incident, the investigating officer examined W2 for body marks and noted dry blood on W2's right temple area, and redness on her throat.

Based on the investigation of the March 2 events, the investigating officer arrested Applicant for injury to W2 and battery (simple), took him into custody, and transported him to a local police station for booking. (GE 6) A misdemeanor complaint was filed in the local superior court, charging Applicant with corporal injury to a spouse/cohabitant/child's parent and battery: simple. (GE 6) Applicant plead no contest to both counts and was found guilty of each count. The sentencing court placed him on probation for 60 months; ordered him to serve 45 days in jail or perform 45 days of work for a state program; required him to attend a domestic violence batters' program (VP); required him to attend 20 Alcoholics Anonymous (AA) meetings; and fined him. (GE 6)

Post-conviction rehabilitation efforts

Applicant enrolled in a recognized violence prevention program (VP) in June 2006 and documents his completion of the 52-week program in July 2007. (*see* GE 7 and AE B; Tr. 113) He also completed 20 meetings with a local AA chapter. (AE B; Tr. 114) Applicant documented his completion of 48 hours of community service, in lieu of serving 45 days of jail time. (*see* AE B; Tr. 151-152)

Contemporaneous with his enrollment in VP's domestic violence program Applicant voluntarily admitted himself to an outpatient treatment program with K facility in March 2006. Medical records document Applicant's weekly participation in K facility's adult treatment plan between March 2006 and June 5, 2006. (AE B). K facility's consultation report included an alcohol and drug history from Applicant. It reports the absence of any prior diagnosis or treatment for a mental or emotional disorder or substance abuse problem. In providing background information to K facility, Applicant denied any family history of mental illness, but reported a positive family history of substance abuse with his siblings. He reported the absence of any parental physical and emotional support during his nurturing years. And he denied any prior hospitalizations.

Citing logistical conflicts with his anger management classes, Applicant ceased attending his outpatient sessions with K facility in July 2006. (Tr. 137-138). In his interview with an investigator of the Office of Personnel Management (OPM) in July 2007, Applicant assured the investigator he could not historically recall any instances of taking prescribed medications. Nor could he recollect any diagnosis of any kind of condition. (*compare* GE 3 with AE B)

Since the Fall of 2008, Applicant has participated in a spiritually-based 12-step recovery program affiliated with his church. (*see* GE 3 and AE A; Tr. 141-143) The program's ministry leader, and Applicant's current sponsor, described his church's celebrate recovery program as a Christ-centered, biblically-based 12-step recovery program for men and women "dealing with all kinds of life's hurts, habits and hang-ups."

(AE A; Tr. 53). His ministry uses a 12-step program similar to the program used by AA chapters nationally. (AE A; Tr. 53) Its stated purpose is to encourage fellowship and to celebrate God's healing power as they work their way along the road to recovery.

Both Applicant and his past co-leader of his ministry's alcohol recovery program credit the program with helping Applicant to maintain his sobriety and account for and take more responsibility for his own actions. (Tr.131-134, 143-145) Like AA, his church's 12-step program offers chips to celebrate sobriety milestones. The ministry's pastor credits Applicant with completing all of the 12 steps in the program, and continuing to work the same steps as a co-leader of his 12-step ministry with his church pastor and sponsor since September 2009. (*see* AE A; Tr. 54-55

Applicant provided no chips or other documentary evidence to corroborate his abstinence claims and clean arrest record since March 2006. Nonetheless, the assurances provided by Applicant and his pastor/sponsor that Applicant, with the aid of his church's celebrate recovery ministry, has maintained his abstinence since March 2006 are credible and accepted. (*see* AE A; Tr. 50-57, 131-132)

Afforded an opportunity to explore his obtaining an early release from his probation condition (then due to expire in March 2011), Applicant successfully moved the supervising court with continuing jurisdiction over Applicant's March 2006 conviction to grant him early release from any continuing probation conditions. (*see* AE D). The court's October 2010 minute order confirmed the court's termination of Applicant's probation upon his motion to modify his probation. The state did not oppose Applicant's motion. (AE D)

Applicant's E-Qip and OPM interview omissions

Asked to complete a security application (E-QIP) in March 2006, Applicant listed his pending charges related to his March 2, 2006, spousal abuse offense. (*see* GE 1) However, he omitted his 1993 incident. This incident was potentially includable in the pertinent information sections of the E-QiIP because it involved an underlying felony conviction. Specifically, his 1993 incident covered the investigation of reported cruelty to a child and warrant for his arrest for violation of probation ordered by the sentencing court in 1990. However, neither the charging revocation of probation motion nor the entered orders of the hearing court cited any governing penal authority for probation revocation, and there is noting in the record to identify the governing standards in the event Applicant's probation was revoked.

Factually, it is not at all clear whether a probation revocation in the jurisdiction where the 1993 matter arose invoked a felony, or just a misdemeanor. If a violation of probation is only a misdemeanor in Applicant's state, then Applicant's 1993 arrest would not have required listing in his E-QIP. Uncertainty in classifying the criminal level of a probation violation covering a felony conviction may best explain why Applicant's 1993 arrest was not alleged in the SOR. Since the issuance of the SOR, there has been no

Government amendment request to add Applicant's 1993 arrest as an arrest that should have been listed in Applicant's E-QIP.

Applicant was twice interviewed by Government investigators concerning his arrest history. In his July 2004 interview with an agent from the Defense Security Service (DSS), he covered his arrests in 1988 and 1990, but did not mention his receipt of an issued 1993 warrant for his arrest for probation violation. Applicant denied any intention to intentionally omit this arrest, but provided no detailed explanations. Without any established legal certainty that a probation violation related to a felony conviction itself constitutes a felony, on legal requirement can be ascribed to Applicant to disclose the 1993 warrant and motion. In his E-QIP.

In October 2007, an agent from OPM scheduled an interview with Applicant to discuss his March 2006 spousal abuse incident with W2. Asked why he did not list the arrest in his March 2006 E-QIP, Applicant indicated that the incident "occurred after he submitted his SF questionnaire." (GE 3) He proceeded to provide background information preceding the incident, and limited information about his recall of the incident itself. There are no indications in the summary of interview that the OPM agent asked Applicant about any other arrests, or that the arrest warranted full voluntary disclosure by Applicant. Applicant volunteering that he has "committed no other similar offenses" other than the ones he was convicted of 1989 and 1990 was not a misstatement, if the underlying felony conviction did not set the legal parameters for determining the nature of any probation violation. (GE3) Applicant provided no other pertinent information about his 1993 arrest.

Applicant's explanations of his omissions of his 1993 arrest in both his 2004 and 2007 interviews are not totally reconcilable with his past statements regarding the substantive charges. His claim that his girlfriend falsely accused him of striking a child is not entirely consistent with the police findings following an investigation into claims that Applicant spanked his girlfriend's son. Although the anonymous caller's identity is not clear from the police accounts of the 1993 incident, accounts of his spanking the child are fairly settled. What investigating officers could not agree on was the extent of the injuries incurred by the child, and whether the evidence was sufficient to revoke Applicant's probation.

More persuasive are Applicant's confusion claims stemming from his misunderstanding of the significance of the court's dismissal of the 1993 probation violation charges.. Contextually, he claimed confusion over the E-QIP question in light of the dismissal of the probation violation charges based on the developed evidence by investigating police. His stated reasons for not volunteering information about the 1993 incident without any questions from interviewing agents are plausible and credible under all of the circumstances considered, and are accepted. While he does not question the punishable nature of a probation violation (felony or misdemeanor), it is questionable whether he had any duty to disclose his 1993 arrest to the interviewing OPM agent. Only if a probation violation was legally defined as a felony itself would the arrest (older than seven years) need to be disclosed at all by Applicant.

Considering all of the circumstances surrounding the statements provided by Applicant in his 2004 DSS interview and his 2007 OPM interview, inferences warrant that Applicant's interview omissions of his 1993 arrest were legally excusable. In the event a probation violation associated with an underlying felony conviction could be considered a felony and subject to disclosure requirements, inferences warrant that Applicant's failure to disclose his 1993 arrest in either interview was inadvertent.

Endorsements and performance evaluations

Applicant is highly regarded by his coworkers. His maintenance facility leads describe Applicant as trustworthy and dependable. They credit him with integrity and responsibility. (*see* AE A) His church pastor with considerable knowledge of his drinking and anger issues cites Applicant's marriage to W2 following his March 2006 incident as a strong testament of his progress in overcoming the alcohol and anger problems that contributed to so much of his arrest history. (AE A) Applicant's pastor credits Applicant with being an active church member who is trustworthy and honorable.

Members of Applicant's celebrate ministry are equally effusive in their praise of Applicant's positive efforts in overcoming alcohol and alcohol issues and consider Applicant an invaluable member of their Celebrate Recovery ministry. (AE A) They credit him with demonstrated Christ-like qualities, honesty, openness, humility, and a unique willingness and ability to lead others by serving. Both his pastor and local outreach minister recommend Applicant for a position of trust.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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 chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Criminal Conduct

> *The Concern:* Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. AG, ¶ 30.

Alcohol Consumption

> *The Concern*: 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. *See* AG, ¶ 21.

Personal Conduct

> *The Concern*: Conduct involving questionable judgment, untrustworthiness, unreliability, 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. AG, ¶ 15.

Burden of Proof

Under the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and

logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove by substantial evidence any controverted facts alleged in the SOR; and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or his security worthiness through evidence of refutation, extenuation or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security-clearance determinations should err, if they must, on the side of denials." *See Department of the Navy v. Egan,* 484 U.S. 518, 531 (1988).

Analysis

Applicant presents as a conscientious maintenance facility technician with a considerable history of assorted arrests and convictions (several alcohol-related) over a 26-year period and recurrent problems with alcohol before turning to a spiritually-inspired recovery program. Principal security issues raised in this case center on Applicant's history of arrests for child and spousal abuse, his recurrent periods of alcohol abuse, and his omitted accounts of a 1993 arrest in his DSS and OPM interviews that followed his completion of an E-QIP in March 2006.

Criminal arrest issues

Applicant's arrests and convictions fall into two principal categories: drugs and alcohol, driving on a suspended license, and burglary arrests in the 1984-1985 time frame, and a series of child abuse arrests (three in all) spaced between 1988 and 1993, and a more recent spousal abuse arrest and conviction in March 2006. All but his 1993 probation violation charges resulted in convictions and extensive probation conditions, and in one instance (associated with his 1990 child abuse conviction), jail time.

Applicable disqualifying conditions under the criminal conduct guideline include DC ¶ 31(a), "a single serious crime or multiple lesser offenses," DC ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted," and DC ¶ 31(e), "violation of parole or probation, or failure to complete a court-mandated rehabilitation program." To be sure, Applicant was never fully prosecuted or convicted of any probation violations. Nonetheless, e-mail exchanges between Applicant and his parole officer in 1991 and 1992, and arrest reports

associated with Applicant's 1993 arrest warrant for a violation of probation, reflect *prima facie* instances of probation violations. The cited records are enough to justify the application of DC ¶ 31(e) to the facts of Applicant's situation.

Applicant's arrest and conviction history covered over 20 years and included two serious child abuse incidents in 1988 and 1990 that resulted in jail time and lengthy probation conditions. More recently, he was convicted of spousal abuse and placed on five years of probation and required to participate in anger management classes. Together, they reflect a recurrent pattern of criminal behavior over an extended period of time.

Since March 2006, Applicant has not been involved in any recurrent abuse incidents. Applicant attributes his demonstrated rehabilitation to the anger management classes he completed in July 2007, the counseling he received from K facility in 2006, the support he has had from W2, and the spiritual growth he has been able to achieve with the support of his Celebrate Recovery ministry. The growth and maturing that Applicant has displayed throughout his rehabilitative efforts are impressive. He has avoided any incidents with law enforcement since his last reported incident of March 2006, and shows renewed strength in his relationships with W2 and his daughters. His probation conditions that were not due to expire until March 2011 have been terminated by the court. As matters stand, Applicant has no remaining probation conditions to satisfy.

Without any evidence to challenge Applicant's steady rehabilitative progress he has shown since his last arrest in March 2006, the criminal conduct concerns that are based on his history of recurrent arrests between 1984 and 2006 are entitled to crediting of mitigation. Applicant may rely on MC ¶ 32(a), "so much time has elapsed since the criminal behavior happened, or it happened under unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Applicant's prior convictions are currently aged and are outweighed by his substantial showing of good judgment and trust demonstrated with his civilian employers, and family over the past four years. Applicant has also established himself to be a responsible parent of his two daughters (since emancipated) and stepson.

In the face of Applicant's persuasive showing of extenuating circumstances surrounding his 2006 arrest, his responsible parenting efforts, and his impressive professional achievements with his civilian employer, his prior arrests and convictions are not enough to warrant continuing security concerns about his judgment, reliability, and trustworthiness.

Based on his own rehabilitative efforts to date (which include anger management classes, permanent changes in his family environment, and almost four years of demonstrated responsibility and trust with his children and with his colleagues in the workplace), the chances of any recurrent domestic actions like the ones that produced his 2006 conviction are highly unlikely. Applicant may take advantage of MC ¶ 32(d) of the criminal conduct guideline, "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."

Both from a consideration of the applicable guidelines, and from a whole-person perspective, Applicant demonstrates he possesses the strength of overall character and rehabilitation to meet all of the minimum requirements under the criminal conduct guideline for continued eligibility to hold a security clearance. Applicant maintains the confidence and trust of past and present leads in his maintenance facility familiar with his work and behavior within and without the work place. And he has completed all of his probation conditions and maintains the positive support of his church pastors.

Applicant's many credits in his life should not be taken to minimize in any way the seriousness of his actions that resulted in his series of child abuse, spousal abuse, and other illegal actions over a 20-year period spanning 1984 and March 2006. Based on the confluence of corrective steps he has taken to date, he persuasively demonstrates that he has learned important lessons from his unfortunate lapses in judgment and familial responsibilities and will work earnestly to avoid any recurrence. Taking into account all of the facts and circumstances developed in the record, favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.c and 1.e through 1.i of the SOR.

Alcohol issues

Applicant's recurrent history of excessive drinking and his 2006 alcohol-related arrest on spousal abuse charges raise important security concerns about his risk of recurrent alcohol abuse. On the strength of the evidence presented, two disqualifying conditions (DC) of the AG for alcohol consumption (AG ¶ 21) may be applied: DC ¶ 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," and DC ¶ 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."

True, Applicant considers himself an alcoholic and attends a church-based 12-step program. Still, he has never been diagnosed for alcohol abuse or dependence. As a result, DC ¶ 22(f), "relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program is inapplicable to the facts of Applicant's case.

Cognizant of his recurrent history of abusive drinking and the seriousness of his alcohol-related spousal abuse conviction in 2006, Applicant has come to recognize he is alcoholic and assures he will continue his 12-step Christ-based recovery program designed to keep him alcohol-free. Since his last and only documented alcohol-related incident in 2006, he has remained abstinent and is committed to avoiding alcohol in the

future. Applicant's assurances are highly credible based on the progress he has shown to date, and are accepted.

Based on the positive steps he has taken to address his problems with alcohol, since his 2006 offense, Applicant may rely on one of the mitigating conditions of the alcohol guideline: MC ¶ 22(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." While four years of demonstrated good behavior is not a significant period of recovery for an applicant who abused the substance recurrently over the previous 28 years, it is enough considering the quality of his recovery program and the time he has committed to sustained abstinence.

Taking into account Applicant's very limited history of alcohol-related incidents (defined by his cited two alcohol-related incidents), his rehabilitation efforts with his celebrate recovery ministry, and his strong work record, the applicable guidelines, and a whole-person assessment, conclusions warrant that his overall efforts reflect sufficient evidence of sustained commitment to abstinence (over four years of sobriety) to ensure that he is not at any risk of recurrent alcohol abuse.

Considering the record as a whole, Applicant makes a convincing showing that he has the strength and stability to avert any recurrent problems with judgment lapses related to alcohol. Applicant's mitigation efforts are enough to warrant safe predictions that he is no longer at risk to judgment impairment associated with alcohol abuse. Favorable conclusions warrant with respect to the allegations covered by Guideline G of the SOR.

Personal conduct concerns

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E as the result of his omissions of his 1993 probation violation arrest in both his 2004 DSS interview and his later 2007 OPM interview. By omitting his arrest warrant stemming from an investigation into a possible probation violation in 1993, questions arise over whether Applicant failure to furnish materially important background information about his arrest history that was needed for the Government to properly process and evaluate his security clearance application.

Applicant's omissions are attributable to some misunderstanding and uncertainty over the listing requirements of the issued arrest warrant in light of (a) leal questions over the legal nature of a probation violation associated with an underlying felony conviction and (b) a subsequent favorable court finding on the underlying charges. Because of the raised uncertainty over the nature of a probation violation covering an underlying felony (misdemeanor or felony) and Applicant's accepted confusion over the meaning of the pertinent E-QIP question in light of the court's ensuing finding in his favor, no conclusions of deliberate omission may attach to his failure to disclose the arrest in either of his two interviews. Accordingly, the falsification allegations are unproven.

In evaluating all of the circumstances surrounding Applicant's DSS and OPM omissions of his 1993 arrest, and his hearing testimony, his explanations are sufficient to enable him to convincingly refute or mitigate the deliberate falsification allegations. Overall, Applicant's explanations about his omissions and misrepresentations are persuasive enough to warrant conclusions that the falsification allegations relative to his omissions of his 1993 arrest in his DSS and OPM interviews are unsubstantiated. Taking into account all of the evidence produced in this record, favorable conclusions warrant with respect to the Guideline E allegations that Appellant knowingly and wilfully omitted his 1993 arrest warrant in the DSS and OPM interviews he attended in 2004 and 2007, respectively.

Formal Findings

In reviewing the allegations of the SOR in the context of the findings of fact, conclusions, and the factors and conditions listed above, I make the following separate formal findings with respect to Applicant's eligibility for a security clearance.

GUIDELINE J (CRIMINAL CONDUCT):	FOR APPLICANT
Subparas. 1.a -1.c, 1.e -1.i	For Applicant
:	
GUIDELINE G (ALCOHOL CONSUMPTION):	FOR APPLICANT
Subparas. 2.a -2.c:	For Applicant
GUIDELINE E (PERSONAL CONDUCT):	FOR APPLICANT
Subparas 3.a and 3.b:	For Applicant

Conclusions

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 Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge