



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 07-14323
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

September 10, 2008

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted a Security Clearance Application, Standard Form SF-86, dated July 7, 2005. On May 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In response to the SOR, Applicant submitted answers to the allegations, dated June 2, 2008. He admitted all allegations, but requested a hearing to explain his admissions and raise mitigating conditions. Applicant's request for a hearing was received on June 30, 2008, and I was assigned the case on July 10, 2008. Applicant and Department Counsel proposed a hearing date of August 14, 2008. A notice of hearing was issued on July 17, 2008, setting the hearing for that date.

The hearing was convened as scheduled. The Government offered four exhibits, which were accepted into the record as exhibits (Exs.) 1-4 without objection. Applicant represented himself and gave testimony; no witnesses were called. He offered nine exhibits, which were accepted into the record without objection as Exs. A-I. The record was held open through August 29, 2008, to afford Applicant the opportunity to supplement the record. A package of two documents, dated August 26, 2008, was sent by facsimile transmission by Applicant. It was received on August 27, 2008. On September 2, 2008, the Government expressed its lack of objection to the proffered documents. They were accepted into the record as Exs. J-K. A copy of the transcript (Tr.) was received on September 2, 2008. The record closed on September 2, 2008.

Findings of Fact

Applicant is a 47-year-old senior mechanic for a defense contractor. He has an Associate of Arts degree and several professional certifications. Applicant retired from the United States Naval Reserves after 22 years of service. He has two teenage sons, currently aged 17 and 18. He is legally separated from his wife and pursuing a divorce.

In 1987, early in his career and in his mid-20s, Applicant was charged with Driving Under the Influence and Failure to Use Designated Lanes. He pled guilty to the charge. He was sentenced to six months probation, 50 hours of community service, and had his driver's license revoked for six months.¹

Applicant subsequently married. The marriage was volatile, but it produced two children. He balanced his home life with his United States Naval Reserves duties. Applicant traveled alot as a reservist. By the end of his service, it was not unusual for him to be on travel two to three weekends a month.² Consequently, family time with his sons was a dear commodity. On April 4, 1993, Applicant came home to help his wife prepare for their eldest boy's birthday. A squabble ensued regarding a gift or a card for their young son. Applicant's wife would not drop the matter and pursued it. Finally, Applicant told her, "I've had enough. . . . I'm getting away from you and going outside."³ He left the house and opened the hood of her car to start working on it. She followed him, screaming and swearing. Demonstrating some "fairly foolish" behavior, he gave her a kick to her backside end and told him they would continue the discussion in the kitchen after things cooled down.⁴ She walked into the house and called the police. The police quickly arrived. When advised he could be charged with a city ordinance violation, Applicant's wife chose not to press charges. The policeman, however, cited him for Battery. Applicant was found guilty of Battery and sentenced to a \$100 fine.

¹ In commenting on its nexus to the subsequent alcohol-driving charges, Department Counsel described the incident as "far in the rearview mirror at this point." Tr. 54.

² Tr. 12.

³ Tr. 39.

⁴ Tr. 54.

On or about July 20, 2005, Applicant came home early to help his family have a backyard barbeque by the family pool. As he was preparing steaks for the grill and drinking a second beer, his wife announced they were out of barbeque sauce. Applicant left the steaks and proceeded to drive to the base to get barbeque sauce, never thinking the beer he consumed could put him near the legal limit for alcohol.⁵ In a rush to get back to the steaks, Applicant exceeded the posted speed limit. He was pulled over by the police. The policemen thought Applicant was trying to elude him by pulling in near the base. Applicant explained that he had been enjoying a family barbeque, drinking a beer, and working the grill, when he was told there was no barbeque sauce. Consequently, he explained, he had been in a rush to get back to the grill. Applicant was charged with Speeding and Driving Under the Influence of Alcohol, a misdemeanor. At trial, however, the policemen recommended to the court that the charge be dropped down to Reckless Driving.⁶ Applicant was found guilty of speeding and Reckless Driving.

The following year, on or about July 1, 2006, Applicant prepared to go with his teenage sons to visit his father and brother. The plan was to pull his 18-foot fishing boat across the state so the men could go on a fishing trip. The night before the drive across their state, they had some friends over for a barbeque and beer. The day of the trip, Applicant came home from work early, around 11:00 a.m. While he cleaned and prepared the craft, he had a couple of beers. Later that day, Applicant and his sons made the six hour drive across state. Once they got to the right city, however, they got lost finding Applicant's brother's home. Driving about with a large boat in tow was difficult and required special maneuvering. The challenge was made more difficult because it was after midnight and all three were tired. They pulled over. An exhausted Applicant called his brother. Sometime after 1:00 a.m., Applicant's brother found them and led them to the residential area where he lived. They towed the boat toward the brother's apartment complex, but were pulled over by the police before parking. Applicant was ultimately charged with Driving or Being in Actual Physical Control of a Motor Vehicle While Under the Influence of an Alcoholic Beverage. The case was sent to the jury, which found Applicant not guilty on April 19, 2007.⁷

Although Applicant was not concerned about his drinking, he was concerned about the incident. His honesty in admitting he had consumed some beer the night before and one or two beers around lunchtime of that same day, over 12 hours prior, had given the wrong impression. After the fishing trip incident, he limited his alcohol consumption to a once a week event.⁸

After Applicant retired as a reservist, he was able to spend more time at home. He discovered things about his family that he considered highly unacceptable.

⁵ Tr.36.

⁶ Tr. 37.

⁷ Ex. A (Circuit/County Court, Criminal Division, Verdict Form); Tr. 33-35.

⁸ Tr. 42-43.

Previously unbeknownst to him, alcohol and marijuana were freely abused in the home. His wife condoned, if not encouraged the teenagers' cultivation of marijuana in the home.⁹ She drank to excess. His discovery of such conduct led to marital disagreements that culminated on November 25, 2007.

After leaving the home in her car for a prolonged period of time, supposedly to do some light shopping, Applicant's wife returned home with an open bottle of vodka in the car.¹⁰ Applicant thought she was inebriated.¹¹ She denied it. An argument ensued and grew heated. Applicant told her he was through living with the alcohol and the drugs in the house. He went to the porch to smoke a cigarette, stating "I'm finished, we're done."¹² Applicant, who is 5'10" and 150 pounds, was standing on the porch when he found himself stabbed in the back by his 5' and 96 pound wife with an 8" filet knife.¹³ Applicant made it to the living room and called 911. While on the phone, his wife pulled the knife out of his back and threw it out onto the porch.¹⁴ When the police arrived, Applicant was "bleeding profusely" from a stab which produced a "severe injury."¹⁵ His wife told the police that he had attacked her and she had stabbed him to get him off of her.¹⁶ She said she did not know where the weapon was, but it was found on the back porch between a wall and a table.¹⁷ Applicant was rushed to a local trauma center for treatment. He was ultimately charged with Battery-Simple Battery, Family Violence (Misdemeanor) after undergoing surgery. He was also put on probation. In the interim, his wife was placed under arrest for Aggravated Assault (Felony) and ultimately spent about 19 days in jail.¹⁸ The incident ended their marriage.¹⁹ Applicant filed for divorce. He has not spoken to her since the 2007 stabbing.²⁰

⁹ Ex. C (Civil Action File, filed April 25, 2008) at 1.

¹⁰ Ex. K (Court transcript, page 30) at 2.

¹¹ The police incident report notes that both parties had consumed alcohol, as opposed to drugs, but nothing in the report notes behavior traits or other notations indicating whether this consumption was excessive. Ex. B (Family Violence Incident Report, dated November 25, 2007) at 1.

¹² Tr. 18.

¹³ Ex. K, *supra* at 2.

¹⁴ Ex. K (Court transcript, page 31) at 3.

¹⁵ Ex. B (Family Violence Incident Report, dated November 25, 2007) at 2. Department Counsel accurately commented: ". . . if you read the report, applicant is lucky to be here, eight inch blade. It's a wonder it wasn't a fatal wound." Tr. 55-56..

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Tr. 18.

¹⁹ Tr. 14.

²⁰ Tr. 40.

The charge against Applicant has never gone to court. He and his wife, however, were legally separated. Custody of the sons and retention of the domicile became an issue. Because the boys liked the easier rules controlling life in the mother's house, they were initially placed with their mother in March 2008. After the family home was raided by the police and the three were charged with multiple felonies, including drug charges, Applicant went back to court to gain custody of his sons. He was successful in his action and the sons were removed from their mother's care in April 2008.²¹ The boys are now living in their house with their father. The teens are back in school and normalcy has returned to the family. Applicant is providing the sons with a quiet, orderly life without drugs and alcohol.²² Applicant has not had contact with his estranged wife since the day he was stabbed.²³

Since the stabbing and regaining custody of his sons, Applicant has consumed minimal alcohol: "very, very minor. A glass of wine here and there. A beer here and there. And now I'm at the point that its nonexistent."²⁴ As part of his probation in the pending battery charge, Applicant is to refrain from drinking. He was put on probation in February 2008, but he was unaware of that provision until he met with his probation officer in April 2008. At the time of the hearing, he had not consumed alcohol for a period dating back to around the time of that meeting.²⁵ He has passed all alcohol tests administered as part of his probation.²⁶

The three instances cited, from 2005/2006 and 1987 are Applicant's only brushes with the law concerning alcohol; only the 1987 incident led to an alcohol-related conviction or any related sanction. In the past, Applicant's use of alcohol has never affected his work or everyday functioning.²⁷ He did not regularly drink to excess. He is unsure whether his use of alcohol contributed to his marital problems with his estranged wife.²⁸ There is no indication Applicant has ever had an issue with illegal drugs.²⁹ He is dedicated to being an good example for his sons.

²¹ Tr. 20, 25-26.

²² Tr. 30-31.

²³ Tr. 40.

²⁴ Tr. 43.

²⁵ *Id.*

²⁶ Tr. 44.

²⁷ Tr. 37-38.

²⁸ Tr. 37 ("That is a good question. Possibly.")

²⁹ Ex. J (Probation Officer letter, undated) ("[Applicant] has excellent reporting habits and continues to test negative for drug screens.")

As an employee, Applicant's annual ratings routinely place him between the equivalent of a 4 and a 5 on a 5 points scale, with 5 being the highest grade available.³⁰ He regularly exceeds work requirements and is highly lauded for his work and his work ethic. Applicant stresses that he has always segregated his professional and personal life, especially in light of the last three years of personal turmoil.³¹ A superior describes him as "very reliable, dependable . . . and has set a very high standard, not only for himself, but for subordinate employees as well."³² That same superior notes Applicant's devotion to his sons while stating that despite the recent turmoil with Applicant's wife, Applicant "has still continued to maintain his high work ethic and motivation at the work place."³³ One co-worker notes that Applicant is "a hard working individual and one that can be trusted."³⁴ Another co-worker states: "[Applicant] is dependable, reliable, trustworthy, and consistent as a fellow employee. He has also demonstrated . . . to be [a] very family oriented individual, with traditional values."³⁵

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

³⁰ Exhibit I (Personal Portfolio), tab "Evaluations."

³¹ Tr. 28.

³² Ex. F (Reference, dated August 12, 2008).

³³ *Id.*

³⁴ Ex. G (Reference, dated August 13, 2008).

³⁵ Ex. H (Reference, dated August 11, 2008).

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³⁶ The burden of proof is something less than a preponderance of evidence.³⁷ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.³⁸

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁴¹ 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.

Analysis

Based upon consideration of the evidence, and Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) are the most pertinent to the evaluation of the facts in this case:

³⁶ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Executive Order 10865 § 7.

Guideline J, Criminal Conduct

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. With respect to Guideline J (Criminal Conduct), the Government has established its case. Applicant admits that he was charged with Battery/Simple Battery-Family Violence in 2007 and is currently on probation for the alleged offense, arrested and charged with Driving Under the Influence in 2006, arrested and charged with Speeding and Driving Under the Influence in 2005 before being found guilty of Speeding and Reckless Driving, found guilty and fined for Battery in 1993, and pled no contest to Driving Under the Influence and Failure to Use Designated Lanes in 1987. Such conduct and admissions are sufficient to raise security concerns, and invoke Criminal Conduct Disqualifying Conditions (CC DC) 1, AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*), and CC DC 3, AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted*).

The 1987 no contest plea to the Driving Under the Influence charge preceded the 2005/2006 alcohol-related charges by nearly 20 years and there are no intervening incidents. Similarly, there were no instances of battery cited between Applicant's 1993 conviction and his 2007 charge, which occurred nearly 15 years later and which has yet to be prosecuted. Consequently, the earlier incidents cannot be said to foreshadow more recent events or to establish some on-going pattern of criminal conduct. They stand remote and unrelated to more recent conduct.⁴² Therefore, Criminal Conduct Mitigating Condition (CC MC) AG ¶ 32(a) ("so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment") applies. Additionally, Applicant's wife's stabbing of her husband, removal of the 8" blade from his back as called 911, and attempt to cover-up her grievous action resulted in her being sent directly to jail on a felony charge. In contrast, Applicant's misdemeanor battery charge has yet to move to trial, if it ever does. In light of the facts of record, including Applicant's soon to be ex-wife's own contradictory court testimony regarding this incident, there is little that can be said to characterize the facts or circumstances as usual or ordinary. Nor are there aspects about the incident that bear adversely on Applicant's reliability, trustworthiness, or judgment. Therefore, AG ¶ 31(a) applies equally to the 2007 stabbing.

In 2006, Applicant was cited for Driving Under the Influence. He concedes he consumed alcohol earlier in the day, probably around lunchtime. He then towed a 16-foot fishing boat across state on a six hour drive with two teenage boys. The drive apparently took much longer than six hours and they did not reach their destination until about 1:00 a.m. Exhausted, he was pulled over. He told the police he had consumed alcohol that day. He was arrested for Driving Under the Influence. At trial, however, the

⁴² To the extent the 1993 kick and the 2007 stabbing were both altercations involving the same spouse, it is additionally notable that Applicant and his wife are now legally separated, no longer maintain contact, and are poised for divorce.

jury determined he was not guilty of the alcohol-related criminal conduct cited, giving rise to CC MC AG ¶32(c) (“evidence that the person did not commit the offense”).

After the 2006 Driving Under the Influence charge, Applicant decided it was best to limit his drinking of alcohol to once a week. He was already reducing his consumption to a negligible amount close to “nonexistent” when abstinence was made part of his probation. Although alcohol has never affected his work or his everyday functioning, he is adhering to this rule not just as part of his probation, but as part of his efforts to set an example for his sons. At the time of the hearing he had not had a drink in months and his own alcohol consumption had not raised any issues in a few years. As for the alleged battery in 2007, the facts make it clear that he was the victim. He is remorseful that his marriage ended in such a manner. Through divorce, Applicant is endeavoring to never again be involved with a substance abusing wife, thus removing any potential that they will again have a domestic disagreement. As noted above, Applicant’s superior employment record and work ethic, as well as his relationship with his sons, have not been impaired or impeded. Today, his main goal is providing a quiet, orderly home life for his sons and a continued, successful career. Together, these factors raise CC MC AG ¶ 32(d) (“there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.”

Guideline G, Alcohol Consumption

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. Here, the Government cites to instances in 2007, 2006, 2005, and 1987 as examples of Applicant’s excessive alcohol consumption.

The weight of the evidence, combined with Applicant’s highly credible and candid testimony, suggest that while Applicant may have consumed alcohol on the day of the November 2007 incident, his own consumption did not lead to his stabbing. While the police report notes that both parties had consumed alcohol, it does not depict Applicant’s alcohol use as excessive or describe his judgment as impaired. Rather, both his testimony and her testimony in another proceeding indicate that he remained rational throughout the attack. As for the 2006 incident, in which Applicant concedes he had imbibed moderate alcohol many hours before being pulled over while towing his boat, a jury of his peers determined he was not under the influence of alcohol at the time. The evidence regarding how much alcohol may have contributed to Applicant behavior in the 2005 incident is incomplete. The judgment against Applicant in 1987, however, clearly indicates alcohol consumption was a sufficiently essential element to raise concerns. Consequently, those latter two incidents raise Alcohol Consumption Disqualifying Condition (AC DC) AG ¶ 22(a) (“alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent”).

Although the 2005 incident does not clearly demonstrate an incident of excessive alcohol consumption, Applicant conceded he had consumed beer. As a result, the police charged him with an alcohol-related offense along with speeding. At trial, however, it was the police officer who, in light of the unique facts, apparently reconsidered the situation and questioned whether Applicant's alcohol consumption was sufficiently excessive to merit consideration of the alcohol charge.⁴³ As a result, the officer requested the court consider the speeding incident only as a case of reckless driving. Further, the 1987 incident occurred when Applicant was in his 20s, nearly two decades ago. No intervening alcohol-related incidents occurred in the late 1980s, through the 1990's or the early 2000's. While the circumstances surrounding that incident are unexplored, it is hard to conclude that they bear on the Applicant of today. Given these factors, Alcohol Consumption Mitigating Condition (AC MC) AG ¶ 23(a) ("so much time has passed, or the behavior was so infrequent, or it happened in such unusual circumstances that it is unlikely to recur or does not cast doubt as to the individual's current reliability, trustworthiness, or good judgment") applies. None of the other mitigating conditions apply.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors noted above. Applicant is a mature, direct, and candid individual with a fine work record and a notable devotion to his children. As a witness, he was highly credible. He openly acknowledges the friction that existed between himself and his soon to be ex-wife and takes responsibility for those times he thoughtlessly drank alcohol and drove a car.

Applicant's 1987 Driving Under the Influence conviction was rightly described as "far in the rearview mirror at this point." Occurring nearly two decades before his next

⁴³ While the mere fact Applicant got into a car after consuming one beer may be sufficient to raise concerns and initiate inquiry, the arresting officer was in the best position to gauge any degree of impairment or ill judgment on the part of the Applicant.

such citation, it bears no nexus to his subsequent charges. Similarly, the 1993 battery was the result of a foolish argument in which no physical harm was caused and his wife was reluctant to press charges. They would endure nearly 15 years more of cohabitation and marriage before their unforeseeable and somewhat bizarre November 2007 incident.

The 2005 incident falls somewhere between a misjudgment and bad luck. Applicant was unexpectedly told by his wife to go and buy barbeque sauce. He was more than likely pulled over because of his speeding, not for the two beers which could someone of his slight build adversely.⁴⁴ When pulled over, it was the Applicant who volunteered the fact he had consumed a less than excessive amount of alcohol. That confession, however, required the police to add an alcohol charge to the speeding charge. Notably, however, it was the arresting officer who asked the court to reduce the pending charge to reckless driving. Later, Appellant was found not guilty by a jury of his peers in the 2006 incident. While Applicant may have consumed an alcoholic beverage the day he was stabbed in November 2007, it is his wife's intoxication that is the most notable. She was the one who returned home with an open bottle of vodka in the car. Her actions precipitated the argument. She tried to mislead the police with regard to the incident and the location of the weapon. Meanwhile, the facts indicate that he remained rational throughout the nearly fatal ordeal. In short, Applicant experienced a difficult three-year period in his life, some of which was born out of his relationship with his wife. She is no longer in his home and a divorce is pending.

Applicant denied that alcohol has affected his work or his everyday routine. He declined, however, to deny its had any effect on his marriage. By leaving the door open as to whether alcohol affected his marriage, Applicant demonstrated a superior level of candor which is very much to his credit.

It is unclear whether the 2007 battery misdemeanor will proceed to court, but Applicant remains under probation. Generally, probation is a signal to this process that the Government, too, should have reservations about Applicant. Here, his probation officer reports that Applicant has excellent reporting habits and continues to test negative for drug screens, has completed required evaluations, and is current on all fees and payments. Applicant reports that he is successfully maintaining abstinence as part of his probation and in his efforts to set a better example for his sons. Indeed, it is clear that Applicant will comply with most any restrictions for the opportunity to continue his care for his sons and to help guide them into manhood. Both probation and his marital separation certainly provide Applicant with an opportunity to turn his life around. The weight of the evidence shows he is taking advantage of that opportunity.

Finally, the ultimate issue is whether it is in the best interests of the nation to further entrust Applicant with classified information. Applicant has noted that he is devoted to his work and that he has successfully segregated his professional life from his personal turmoil. He has even stressed that alcohol has never affected his work performance. His co-workers and evaluations wrote highly of his ability to execute his

⁴⁴ See Tr. 55.

work duties and his work ethic; one co-worker explicitly noted that neither Applicant's work nor work ethic suffered despite recent events. The whole person considerations in this case are particularly compelling. Applicant has mitigated security concerns regarding his suitability for a security clearance. I conclude that it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge