



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-14432  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 30, 2008

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**Decision**  
\_\_\_\_\_

HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline G (alcohol consumption). Clearance is denied.

**Statement of the Case**

On May 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant,<sup>1</sup> pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under

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<sup>1</sup>Government Exhibit (GE) 6 (Statement of Reasons (SOR), dated May 7, 2008). GE 6 is the source for the facts in the remainder of this paragraph unless stated otherwise.

<sup>2</sup>On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*

Guideline G (alcohol consumption). The SOR 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 his security clearance, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations on June 13, 2008, and requested a hearing before an administrative judge (Government Exhibit (GE) 7). On August 19, 2008, the case was assigned to me. At the hearing held on September 17, 2008, Department Counsel offered four exhibits (GEs 1-4) (Transcript (Tr.) 10, 16-17), and Applicant did not offer any exhibits (Tr. 11). There were no objections, and I admitted GE 1-4 (Tr. 17). Additionally, I admitted the SOR, response to the SOR and Hearing Notice (GE 5-7). I received the transcript on September 23, 2008. At Applicant's request, I authorized until September 25, 2008, for him to submit documentation about three random urinalysis tests reflecting no alcohol or drug use (Tr. 50-51). However, no such documentation was received.<sup>3</sup>

### **SOR Amendment**

At his hearing, Applicant disclosed that in April 2007 he was sent home from work because he had alcohol on his breath. He subsequently received additional alcohol treatment and counseling. At Department Counsel's request and without objection, I granted the motion to amend the SOR to include these two allegations under Guideline G (Tr. 44-46). These two additional allegations are designated subparagraphs 1.l and 1.m respectively.

### **Findings of Fact<sup>4</sup>**

Applicant admitted in his response to the SOR the allegations in SOR ¶¶ 1.b to 1.h, and 1.j (GE 7). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 57 years old (Tr. 5). He completed 12 years of school; however, he did not graduate from high school (Tr. 5-6). He began working at a shipyard in 1971, and has continued to work in the shipyard thereafter (Tr. 6). He is a sheet-metal worker (Tr. 41). He currently holds a clearance at the secret level (Tr. 6). He has not had any clearance problems aside from the issues address in this decision for the 30 years he

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(Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

<sup>3</sup>I specifically find Applicant was credible in regard to the results of his three random urinalysis tests. I accept those results as accurate without corroborating documentation.

<sup>4</sup>Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. GEs 2 and 3 (Responses to Interrogatories) and 9 (Response to SOR) are the sources for the facts in this section unless stated otherwise.

has held a clearance (Tr. 40). He married when he was 21-years-old and divorced in 2001 (Tr. 24, 33). He has a 24-year-old son, and a 16-year-old daughter (Tr. 33). He has two grandchildren (Tr. 33).

### **Alcohol-related arrests**

On September 15, 2001, Applicant was arrested for DUI and failure to reduce speed (SOR ¶ 1.c, GE 7 at 2). He pleaded guilty and was sentenced to serve 72 hours in jail, pay \$150 in fines/costs, and placed on probation for 12 months. *Id.*

On January 20, 2003, Applicant was charged with drunk in public. He was found guilty, fined \$25, and required to pay costs of \$64 (SOR ¶ 1.e, GE 7 at 2).

On February 26, 2004, Applicant was charged with DUI and reckless driving (SOR ¶ 1.f, GE 7 at 2). He was found guilty and sentenced to serve 30 days in jail, with 25 days suspended, and ordered to attend an Alcohol Safety Action Program (ASAP). *Id.* His driver's license was restricted, and he was fined \$250 plus costs of \$199. *Id.*

On July 16, 2005, Applicant was arrested and charged with DUI, reckless driving, and failure to obey traffic light (SOR ¶ 1.h, GE 7 at 2). He was found guilty and sentenced to 12 months in jail (all confinement except for 20 days was suspended), fined \$1,000 plus costs of \$333, and ordered to attend SARP. *Id.* His driver's license was suspended for three years. *Id.*

The SOR alleges he was arrested in January 2006 for DUI, and held in jail for four days (SOR ¶ 1.i). Applicant disclosed the 2006 DUI in his security clearance application, but he did not disclose any other DUIs (GE 1, § 23). He noted the location of the offense as being in North Carolina, and his sentence as a fine and one-year suspension of his license. *Id.* On January 9, 2007, an investigator from the Office of Personnel Management (OPM) described Applicant's description of the 2006 DUI as follows (GE 2):

Jan 06, DUI, \_\_\_\_\_, NC—He hit a parked car along a highway at night after he had consumed two to three six-packs of beer over a four to five hour period. He drank the beer in a bar and while driving. He was pulling off the road because he had become sleepy. He did not see it, but there was a car parked in the dark along the road and subject hit it. A \_\_\_\_\_ police officer came to the accident scene and administered a breath test to subject. He was put in the \_\_\_\_\_ County Jail for around four days then released. He obtained a lawyer, but he was found guilty of DUI nonetheless. He recalled losing his privilege to drive in North Carolina for a year and he attended a DUI class. He could not recall any other details about the class.

In addition to the DUIs described above, the OPM interview also noted one or two DUIs from a long time ago, but also noted he was unsure of the details (GE 2). Applicant's SOR response denied the 2006 DUI (GE 7). At his hearing, he explained he

thought the 2006 DUI was actually the 2001 DUI because he had only been in that North Carolina city on one occasion (Tr. 34-38). When Applicant completed the DOHA interrogatories and adopted the OPM statement, he did not disagree with the OPM investigator's description because he "mentally probably didn't pick it up" (Tr. 35-36).

### **Alcohol rehabilitation and counseling**

Applicant self-referred for alcohol counseling and treatment in the 1970s when he was in his early 20s (SOR ¶ 1.b, GE 7 at 1, Tr. 23-24). His alcohol treatment in the 1970s included in-patient treatment for some months (Tr. 38). He also received alcohol treatment from November 2001 to at least December 2001 (SOR ¶ 1.d, GE 7 at 2).

Applicant attended a 26-week substance abuse rehabilitation program (SARP) from about May 25, 2004, until November 29, 2004 (SOR ¶ 1.g, GE 7 at 2). He was diagnosed as alcohol dependent. *Id.*

Applicant had black out spells where he was unable to remember his alcohol consumption or where he was, but the most recent one he could recall was "maybe" five years ago (Tr. 33).

Applicant completed a 26-week SARP on about April 12, 2006 (SOR ¶ 1.j, GE 7 at 2). The SARP recommended ongoing abstinence, 12-step attendance, and relapse prevention. (*Id.*, Tr. 25).

Applicant said he had years of sobriety, and then he would have an alcohol problem (Tr. 16). Once he went five years without consuming alcohol, another time it was two years (Tr. 21-22). He drank his last alcohol on April 29, 2007, about 15 months prior to his hearing (Tr. 20).

Applicant received counseling through the 12-step program sponsored by Alcoholic's Anonymous (AA) in 2007 and 2008 (Tr. 26). He said he reached the 5<sup>th</sup>-step, but was unable to describe that step (Tr. 26). He said he once had a sponsor, but was unsure of when (Tr. 26). He said his last AA meeting was on April 30, 2007 (Tr. 26-27). He conceded he misstated that he attended AA in 2008 (Tr. 27). He continued to consume alcohol up until April 2007 (Tr. 27). From April 2006 to April 2007, he was drinking a beer a day (Tr. 27).

In April 2007, Applicant had alcohol on his breath at work at 3:30 p.m. from drinking a beer at 6:00 a.m. that morning (Tr. 29). He was suspended from work (Tr. 30). He attended an outpatient, alcohol-treatment program for eight weeks (Tr. 28-30). He said the prognosis from the 2007 therapy program said "good things on my progress and all that jazz" (Tr. 31). He did not have any other alcohol-related problems at work (Tr. 39-40).

Applicant returned to work after completing the 2007 alcohol treatment program (Tr. 32). His employer tested him three times for alcohol, and he passed each time (Tr. 32). Applicant was not concerned about consuming alcohol in the future (Tr. 32). He

had AA books, and the support of his family to help him overcome alcohol abuse (Tr. 32). He knew that he was close to retirement eligibility and alcohol abuse would harm his economic future (Tr. 33).

Applicant's driver's license is currently suspended and has been suspended for the last three years because of his most recent driving under the influence of alcohol (DUI) in 2005 (Tr. 18). He believed his license would be reinstated once he obtained a vehicle with an automatic breath-alcohol testing and locking device (Tr. 19-20). He also needed to pay his fines from the 2005 DUI (Tr. 18).

Applicant wanted to continue to apply the knowledge and experience he had gained over his 37 years working at the shipyard to help the shipyard (Tr. 42). He described his job performance as exemplary and emphasized it was separate from his alcohol consumption (Tr. 42). He recognized that alcohol abuse was an issue, but believed he could continue to abstain from alcohol consumption (Tr. 42). He wanted to continue to contribute to the company and national defense (Tr. 42).

### **Policies**

In an evaluation of an applicant's security suitability, an administrative judge must consider Enclosure 2 of the Directive, which sets forth adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These adjudicative guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process provision in Section E2.2, Enclosure 2, of the Directive. An administrative judge's overarching adjudicative goal is a fair, impartial and common sense decision.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests 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.

In the decision-making process, facts must be established by “substantial evidence.”<sup>5</sup> The government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to the applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>6</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an 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.

The scope of an administrative judge’s decision is limited. Applicant’s allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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* Executive Order 12968 (Aug. 2, 1995), Section 3. Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.

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<sup>5</sup>“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>6</sup>“The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, [evaluates] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and [decides] whether Applicant [has] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concern is under Guidelines G (alcohol consumption) with respect to the allegations set forth in the SOR.

### Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "[e]xcessive 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."

Seven Alcohol Consumption disqualifying conditions could raise a security or trustworthiness concern and may be disqualifying in this case. AG ¶¶ 22(a) - 22(g) provide:

- (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;
- (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;
- (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;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;
- (f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and
- (g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

AG ¶¶ 22(c), 22(d), 22(e) and 22(g) do not apply. Currently, he does not habitually consume or engage in binge-alcohol consumption to the extent of impaired judgment. Binge drinking is not defined in the Directive and is not established. A qualified medical professional or licensed clinical social worker did not determine Applicant had an alcohol abuse or dependence problem. He did not fail to follow any court orders regarding alcohol education, evaluation, treatment or abstinence. Although he received an alcohol evaluation from an alcohol or addiction counselor, this credential does not meet the requirements of AG ¶¶ 22(d) or 22(e).

AG ¶ 22(a) applies. Applicant was convicted of DWIs in 2001, 2004 and 2005, and drunk in public in 2003. AG ¶ 22(b) applies. He was sent home from work in April 2007 because he had the smell of alcohol on his breath. AG ¶ 22(f) applies. He received in-patient treatment for alcohol for several months in the 1970s, and then had several relapses. He received less intensive, outpatient alcohol treatment in 2004 and was re-enrolled in 2005-2006 (GE 3). The outpatient alcohol treatment program ending on April 12, 2006, resulted in advice to abstain from alcohol consumption (GE 3).

Four Alcohol Consumption Mitigating Conditions under AG ¶¶ 23(a)-(d) are potentially applicable:

(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;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

AG ¶ 23(a) partially applies. Applicant had five documented alcohol-related incidents between 2001 and 2007 that had an adverse effect on his life. He was convicted of three DWIs, drunk in public on one occasion, and was sent home from work in 2007 because of alcohol on his breath. These five events are relatively frequent



and recent. He does not drink alcohol and drive, and accordingly he receives some credit because his DUIs, “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.” AG ¶ 23(a) cannot be fully applied because he continued to consume alcohol up until April 2007. Additionally, he admitted returning to alcohol consumption after previously abstaining from alcohol consumption for up to five years.

AG ¶¶ 23(b) to 23(d) do not fully apply. Applicant did not acknowledge being alcohol dependent or being an alcoholic. He is minimizing his alcohol consumption problem. Although he completed alcohol abuse treatment programs in the 1970s, in 2004, 2005-2006, and 2007, he stopped attending Alcoholics Anonymous meetings and does not currently attend any other alcohol treatment program. He stopped consuming alcohol in April 2007. His long history of alcohol problems and his failure to fully recognize his alcohol problem raises security concerns to receive full mitigating credit.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree and timing of the alcohol abuse and rehabilitation show many different permutations. The Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption.<sup>7</sup>

After carefully consideration of the Appeal Board’s jurisprudence on alcohol consumption,<sup>8</sup> I conclude his five alcohol-related incidents, relapses after alcohol counseling and treatment, and continued alcohol consumption up until April 2007 all raise security concerns. His alcohol-related therapy and treatment over the last thirty years are all positive developments, showing that he continues to struggle to overcome his alcohol problems. I therefore find For Applicant with respect to SOR ¶¶ 1.b, 1.d, 1.g, 1.j and 1.m. I find For Applicant in SOR ¶ 1.i because his 2006 DUI is not proven. I find For Applicant in SOR ¶ 1.k because he no longer consumes alcohol.

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<sup>7</sup>See ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007).

<sup>8</sup>For example, in ISCR Case No. 05-16753 at 2-3 (App. Bd. Aug. 2, 2007) the Appeal Board reversed the administrative judge’s grant of a clearance and noted, “That Applicant continued to drink even after his second alcohol related arrest vitiates the Judge’s application of MC 3.”

In ISCR Case No. 05-10019 at 3-4 (App. Bd. Jun. 21, 2007), the Appeal Board reversed an administrative judge’s grant of a clearance to an applicant (AB) where AB had several alcohol-related legal problems. However, AB’s most recent DUI was in 2000, six years before an administrative judge decided AB’s case. AB had reduced his alcohol consumption, but still drank alcohol to intoxication, and sometimes drank alcohol (not to intoxication) before driving. The Appeal Board determined that AB’s continued alcohol consumption was not responsible, and the grant of AB’s clearance was arbitrary and capricious. See also ISCR Case No. 04-12916 at 2-6 (App. Bd. Mar. 21, 2007) (involving case with most recent alcohol-related incident three years before hearing, and reversing administrative judge’s grant of a clearance).

## 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) the 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 security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

There is considerable evidence supporting approval of Applicant's clearance. He revealed one of his DUIs and some of his alcohol treatment and therapy on his security clearance application. He provided much more detailed information about his alcohol problems to an OPM investigator. He admitted in his SOR response and at his hearing complete information to the best of his recollection. He raised his family and children and is a good citizen. He worked for 37 years at the shipyard and has held a secret clearance for 30 years. He has not had any DUIs since 2005, and stopped consuming alcohol in April 2007. He knows the consequences if he is caught with alcohol on his breath at work or has another DUI. He completed several alcohol treatment programs. Applicant is a valued employee, who contributes to his company and the Department of Defense. Aside from having alcohol on his breath in 2007, there is no evidence at work of any disciplinary problems. There is no evidence of disloyalty or that he would intentionally violate national security. His character and good work performance shows some responsibility, rehabilitation and mitigation. His supervisors evidently support him or he would not have been able to retain his employment over the last three decades. I am satisfied that if he continues to abstain from alcohol consumption, he will have future potential for access to classified information.

The evidence against approval of Applicant's clearance is more substantial. Applicant had a substantial problem with alcohol abuse for about 30 years. He was convicted of DUIs in 2001, 2004 and 2005, and drunk in public in 2003. His employer sent him home from work in April 2007 because he had the smell of alcohol on his breath. He received in-patient treatment for alcohol for several months in the 1970s, and then had a relapse. He received less intensive, outpatient alcohol treatment in 2004 and was re-enrolled in 2005-2006 (GE 3). The outpatient alcohol treatment program ending on April 12, 2006, resulted in advice to abstain from alcohol consumption (GE 3). He was re-enrolled in alcohol treatment in 2007 after he was sent home from work because

he had alcohol on his breath. However, he is not currently receiving alcohol treatment and does not attend AA meetings. His problems with alcohol cannot be mitigated at this time. His decision to continue to drink alcohol over the years was knowledgeable, voluntary, and intentional. He was sufficiently mature to be fully responsible for his conduct. Excessive alcohol consumption shows a lack of judgment and/or impulse control. Such conduct raises a serious security concern, and a security clearance is not warranted at this time. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to alcohol consumption.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”<sup>9</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government’s case. For the reasons stated, I conclude he is not currently eligible for access to classified information.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i to 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark W. Harvey  
Administrative Judge

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<sup>9</sup>See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).