



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



In the matter of:)
)
) ISCR Case No. 07-18720
)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Department Counsel
For Applicant: *Pro Se*

September 30, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant is an alcoholic with numerous arrests for driving while intoxicated. He has been sober since October 2006 when he had his last drink of alcohol. He used marijuana from 1990 through 1994 and again three times in January 2003. Applicant has rebutted or mitigated the government’s security concerns under alcohol consumption, criminal conduct, and personal conduct. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative

Statement of Reasons (SOR) on May 9, 2008, detailing security concerns under alcohol consumption, criminal conduct, and personal conduct.

On June 4, 2008, Applicant answered the SOR, and requested a hearing. On June 16, 2008, I was assigned the case. On July 23, 2008, DOHA issued a notice of hearing scheduling the hearing held on August 14, 2008. The government offered Exhibits (Ex.) 1 through 10, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through E, which were admitted into evidence. Three other witnesses also testified on Applicant's behalf. The record was kept open to allow Applicant to submit additional matters. On August 25, 2008, additional documents were received. There being no objection, the material was admitted into evidence as Ex. F. On August 21, 2008, the transcript (Tr.) was received.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR, with explanations. He also provided a letter from his doctor to support his request for eligibility for a security clearance.

Applicant is a 38-year-old systems analyst who has worked for a defense contractor since March 2006, and is seeking to obtain a security clearance. Applicant's performance report ending September 2007 stated Applicant continued to increase his knowledge of mission operations and has the potential of becoming one of their better analysts. Applicant's facilities manager states Applicant has been "a model client. I have personally reviewed all of his monthly reports." (Ex. F) A senior network analyst states, Applicant has a genuine concern for customers and the level of service provided. (Ex. F) Applicant's supervisor stated Applicant is attentive to work, a valuable team member, and in the top half of all analysts. (Tr. 37) His supervisor rates Applicant number two of the seven people he supervises. (Tr. 44)

Since 1999, Applicant has received ten speeding tickets, of which three were received in 2008. (Ex. 8, 9, and 10) In April 2008, he received his last speeding ticket. (Tr. 30) Since 1992, he has received ten traffic tickets unrelated to speeding, which included failing to use a seatbelt, failure to yield, failure to appear, and other traffic related offenses. Applicant has a valid driver's license. His motor vehicle administration (MVA) record is shown in full in Ex. 2.

Applicant had a serious drinking problem. He admits he is an alcoholic and will be an alcoholic until the day he dies.² (Tr. 109, 149) He acknowledges he is alcohol dependent and bipolar. Applicant stated his last few months of drinking were "especially

guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

²Applicant states, "I do not feel that I will ever drink again. I still consider myself an alcoholic. Although a sober alcoholic, I will always be an alcoholic to the day I die. I cannot consider myself a former alcoholic or a former drinker." (Tr.151)

dark” and “pretty brutal.” (Tr. 107) He would sit at home drinking with a shotgun in his month wondering if he should pull the trigger. Four or five times a week, he drank to intoxication, usually drinking until he passed out. (Tr. 108) He suffered blackouts. He describes himself as a stage 3 – stage 4 alcoholic, which he describes as the point where his alcohol use has caused physical health effects. (Tr. 110) At stage four, the effects of alcohol start to take a physical toll on the body. Applicant states his liver is “messed up.” (Tr. 110)

From 1990 through 1994, he used marijuana and again three times in January 2003. (Tr. 106) His previous use of marijuana, prior to the three times he used in 2003, was 14 years ago at age 24. In May 1991, he was charged with Driving Under the Influence of Alcohol (DUI) and received probation before judgment (PBJ). He attended a three month treatment program. Under the state law, DUI’s are not criminal offenses, but traffic offenses.³

In February 2002, Applicant began seeing a doctor for his bipolar disorder. Applicant was suffering from depression, fear, paranoia, agitation, and stress. (Ex. 3) Applicant knew something was wrong because he was frequently crying. (Tr. 99) In a May 2008 letter, Applicant’s doctor reports Applicant quickly responded to medication, Applicant has been stable for years, and both his bipolar disorder and alcohol dependence are in remission. (Ex. A) Applicant takes his treatment seriously. He sees his doctor once a month. (Tr. 100)

Applicant saw his marijuana use as an attempt to self-medicate prior to obtaining psychological help. (Tr. 106) On his Electronic Questionnaire for Investigations Processing (e-QIP), standard form (SF) 86, dated April 2006 (Ex. 1), Applicant acknowledged, in response to Question 21, that he had consulted a mental health professional. In response to question 24, he acknowledged his marijuana use.

In August 1992, Applicant was charged with possession of marijuana. His driver’s license was suspended for one year. Applicant attended three months of counseling and narcotics anonymous (NA) meetings and was subject to urinalysis testing. Applicant listed this arrest on his SF 86. The charge was *nolle prosequi*. (Tr. 97, Ex. 4) In 1993, he was again charged with possession of marijuana and his license was suspended for another year.

In February 2006, he was charged with Drive While Impaired by Drug or Drugs and Alcohol (DWI – Drug). The charge was *nolle prosequi* when the arresting officer failed to appear in court. Applicant listed the DWI – CDS on his SF 86. Applicant was under a doctor’s care for anxiety and took too much Klohopin, an anti-anxiety medication which he had been described. (Tr. 105)

³ If there is no evidence of a life-threatening injury, a DWI or similar offense is under the Transportation Article of the state code and not the criminal code. In the absence of a life-threatening injury, the offense is a civil infraction. (Tr. 28, 96, Hearing Exhibit 1)

In March 2006, Applicant was again charged with DWI – CDS, and also charged with DWI – Drug, Failure to Stop after Accident Involving Damage to Attended Property, Unsafe Backing of a Motor Vehicle, Failure to Control Speed to Avoid Collision, and Failure to Return and to Remain at Scene of Accident involving Property Damages (Failure to Return). Applicant backed into a neighbor's fence. (Tr. 104) Applicant received probation before judgment for Failure to Return. (Ex. 5, p. 91) The other charges were *nolle prosequi*. (Ex. 5)

Under state law, DWI – CDS is not a criminal offense, but only a traffic offense. Applicant listed the DWI – CDS on his SF 86. Applicant had again taken too much prescription Klonopin. His anti-anxiety medicine was changed. March 2006, was the last time he used Klonopin. (Tr. 61)

In July 2006, Applicant was charged with Driving While Impaired by Alcohol (DWIA); DUI, and Driving While Under the Influence Per Se (DWI Per Se). He received probation before judgment and paid a fine. The July 2006 incident was a violation of his probation and because of it his probation was extended to July 2009. (Tr. 147) During probation, he must stay drug and alcohol free and see his probation officer every four months. In November 2006, an interlock was installed on his vehicle, which he is required to keep on his vehicle until July 2009. (Tr. 121)

In October 2006, he was again charged with DWIA. He was alone at home drinking. He had 13 shots of whisky, which was not night of celebration, but an average night. (Tr. 66) Applicant describes the evening as:

. . . drinking alone in my place. I lost all my friends. I was fired from my band. Alone, every night with a bottle of whiskey, regularly sticking a shotgun in my mouth because I couldn't stand living like I was living anymore.

I had the shakes all day long. I would go out to my car at 5:00 in the afternoon, still stinking like a distillery, throw up and go get more whisky and do it again. I was in hell and now I'm not. (Tr. 56-67)

He ran out of cigarettes and went to the local gas station. On the way home, he fell asleep and had an accident. (Tr. 127) He received probation before judgment and sentenced to five weekends in jail. (Ex. 6) Applicant last drank alcohol on October 7, 2006.

From July 2006 through January 2007, he received alcohol counseling twice a week from a counseling service. (Tr. 101) He went to counseling on the advice of his attorney and doctor. The counseling consisted of watching videos and group discussion. Applicant stated he already knew he was a drunk. (Tr. 135) During counseling, Applicant was not ready to quite drinking. (Tr. 101) Applicant acknowledged he had months of alcohol abuse left. (Tr. 102)

Applicant credits Alcoholic Anonymous (AA) with saving his life. (Tr. 113) Through AA, he found a way to stop drinking. (Tr. 113) He stated the 12 steps are a path to freedom. (Tr. 116) In 2006, Applicant started attending AA meetings. He attended 79 meetings in 90 days. (Tr. 114) For the first nine months of 2007, he was attending two or three meetings a week and attended two meetings a week during the last three months. (Tr. 114) Applicant currently attends AA meetings twice a week. In October 2006, Applicant voluntarily went on Antabuse, which causes one severe discomfort when alcohol is ingested. (Tr. 111) Applicant's August 2008 urinalysis was negative for alcohol and illegal drugs. (Ex. F)

For six years, Applicant played drums in a band. In August 2006, the other band members kicked him out. The lead guitar player is a ten-year veteran of the county police force. (Tr. 76) The officer said, at the time Applicant was kicked out of the band, Applicant was unreliable, had no stamina, looked sick, and was deteriorating physically. Applicant frequently failed to show up and when he did he was worthless. At band practice, Applicant was pathetic. (Tr. 71-72) Applicant continued to deteriorate, was more and more tired, and less and less caring. (Tr. 83)

The police officer has seen a marked change for the better in Applicant since Applicant stopped drinking. (Tr. 92) Applicant is a completely different person than he was before. (Tr. 87) The officer now trusts Applicant. (Tr. 73) Applicant is a driven person who is now the driving force in getting band bookings. (Tr. 74) When asked if the witness would have testified if Applicant had not stopped drinking in October 2006, the witness stated there would have been no need to testify. If Applicant had not stopped drinking in 2006, the police officer believed the Applicant would not be alive for this hearing. (Tr. 75, 92)

In June 2007, the band saw a change in Applicant and asked him to come back. Applicant stated he was not ready to come back and did not return until September 2007. (Tr. 71)

Applicant's father, retired from the Secret Service, has seen a great change in his son since his son stopped drinking. Before, his son was really tense when around his father, now his son is more relaxed, opens up more, and talks more on the telephone. The difference in his son since he stopped drinking has been the difference between day and night. (Tr. 49) Prior to October 2006, his father was always waiting for a telephone call reporting bad news such as a car accident, arrest, or death. His father is no longer worried about getting such a phone call and now gets a full night's sleep. (Tr. 50) The change he has seen in his son has been a relief to him. (Tr. 59) His father now is more comfortable talking with his son. (Tr. 59)

Applicant finally "hit the wall" in 2006. He realized he was at a point where he would either live or die. He states he is a sober alcoholic who can not drink again. (Tr. 151) He takes his alcoholism very seriously and guards against it every day. (Tr. 151) He sees his current life as living instead of merely existing. His first year of sobriety was the hardest. He "was hanging on with white knuckles and tears in" his eyes. (Tr. 134)

He is now where he should have been at age 24. (Tr. 152) He is using coping skills and is living life on life's terms. (Tr. 152) When drinking, Applicant could not stand living. He was in hell, just miserable and now he is not. (Tr.128) He says life is beautiful and he wakes up feeling good. (Tr. 129, 133) Applicant states he lost two jobs when drinking and every relationship he ever had with women was ruined by alcohol. (Tr. 66, 117)

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines 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.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

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).

Analysis

Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to 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.”

Applicant had a serious drinking problem. He admits he is an alcoholic and alcohol dependent. He is also bipolar. His last few months of drinking were “especially dark” and “pretty brutal.” He would sit at home drinking with a shotgun in his month wondering if he should pull the trigger. Frequently, he drank to intoxication, usually drinking until he passed out. His alcohol use has caused adverse physical health effects to manifest.

AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying:

(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 (a) applies due to alcohol-related incidents away from work including: the May 1991 DUI, the July 2006 DWI, and the October DWI. Under AG ¶ 22 (b) there is no evidence Applicant ever reported to work intoxicated or was drinking on the job, but he stated he lost two jobs because of his drinking. AG ¶ 22 (c) applies due to his admissions that before he quit drinking in October 2006, he was drinking four or five times a week to the point of intoxication. Normally, he would drink until he passed out. AG ¶ 22 (d) applies because he was diagnosed as alcohol dependent.

AG ¶ 23 provides conditions that could mitigate alcohol consumption security concerns:

(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.

When Applicant was drinking, there was nothing infrequent about it. He was drinking to the point of intoxication and passing out four or five times a week. Nor did it occur under unusual circumstances. As he stated, he was alone every night with a bottle of whiskey having the shakes all day long. He would go out to his car in the afternoon, throw up and go get more whisky and do it again. AG ¶ 23 (a) does not apply.

In October 2006, Applicant stopped drinking. It has been almost two years since his last drink. There is no 100 per cent guarantee a person will not return to drinking no matter how much time has passed since their last drink. Individuals sober for ten or twenty years return to drinking. Time is but one indicator. A more significant indicator is Applicant's knowledge and understanding of the problem and his attitude toward

addressing the problem. AG ¶ 23 (b) applies because Applicant has acknowledges his alcoholism, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence.

Applicant is an alcoholic and says, although a sober alcoholic, he will always be an alcoholic, not a former alcoholic or a former drinker. He realizes he can not drink again. Before he finally “hit the wall,” he was in hell, a dark and brutal place, frequently contemplating suicide, and regularly sticking a shotgun in his mouth because he couldn’t stand living as he was. He realized he was at a point where he would either live or die.

Alcoholics suffer from a high suicide rate and a significant adverse impact on mental health. Psychiatric disorders are common in alcoholism, especially anxiety and depression disorders. Chronic alcohol misuse can cause panic disorders. In February 2002, Applicant began seeing a doctor for his bipolar disorder. Applicant was suffering from depression, fear, paranoia, agitation, stress, and knew something was wrong because he was frequently crying. Applicant has responded to medication quickly, Applicant has been stable for years, and his bipolar disorder is in remission.

Applicant’s first year of sobriety was the hardest. He “was hanging on with white knuckles and tears in” his eyes. He is now using coping skills and is living life on life’s terms. Applicant credits Alcoholic Anonymous with saving his life. Through AA, he found a way to stop drinking and sees the 12 steps is a path to freedom. Applicant currently attends AA meetings twice a week. Applicant takes his alcoholism very seriously and guards against it every day. He has significantly altered his life, going from hell and misery to seeking life as beautiful, waking up feeling good, living life, not merely surviving.

Applicant’s significant life style change is evidence not only by Applicant’s testimony and that of his father, but that of a 10-year veteran of the country police force. The officer has seen a marked change for the better in Applicant since Applicant stopped drinking. He reported Applicant is a completely different person than he was before he stopped drinking. Applicant is now dependable, trustworthy, and physically in better shape. The officer believes had Applicant not stopped drinking in 2006, Applicant would be dead by now.

From July 2006 through January 2007, he received alcohol counseling twice a week from a counseling service. He has stopped drinking and is committed to maintaining abstinence. AG ¶ 23 (c) applies because he has attended counseling and treatment and is making satisfactory progress. Since 2002, Applicant has been treated by his doctor for Bipolar and alcohol dependence, both of which, his doctor reports, are in remission. AG ¶ 23 (d) applies because Applicant successfully completed treatment and has demonstrated a clear and established pattern of abstinence.

I do not find it a security concern that Applicant has a proscription for Antabuse.

Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to 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.”

Under the state law, DUI, DWI, DWI – CDS, and similar offenses are not criminal offenses, but traffic offenses. Without evidence of a life-threatening injury, the offenses fall under the Transportation Article of the state code and not the criminal code. Since Applicant conduct was not criminal, I find for him as to SOR ¶¶ 2.a, 2.b, 2.c, 2.d, and 2.e.

Applicant used marijuana from 1990 through 1994 and again three times in January 2003. AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 31(a) “a single serious crime or multiple lesser offenses,” and AG ¶ 31(c) “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” apply.

Applicant saw his marijuana use as an attempt to self-medicate prior to seeking psychological help. Applicant was suffering from depression, fear, paranoia, agitation, and stress. Applicant's doctor reports Applicant responded to medication quickly, Applicant has been stable for years, and his bipolar disorder is in remission. Applicant has no need to self-medicate in the future since his problems are responding well to his current medication. Applicant has a good employment record, has expressed remorse, has stopped drinking, and regularly attends AA.

There are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.”⁴

⁴ ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply

Applicant's last use occurred more than five and a half years ago. 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. Applicant is a valuable team member, in the top half of all analysts, and his supervisor rates him number two of the seven people he supervises. 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," applies.

Applicant remains on probation for another ten months. Nothing in the Directive indicates that an applicant's current probationary status is a *per se* bar to a favorable security decision. His probation cannot be simply disregarded. See DISCR Case No. 90-1115 (October 6, 1992) at p.3. ("In evaluating Applicant's behavior since the 1988 criminal charges, the Judge, as trier of fact, may properly note Applicant can be expected to exhibit good behavior while on probation.") The marked change in Applicant's life and life style, his AA attendance, commitment, and sobriety are considered in determining that his remaining probation does not significantly undercut Applicant's claim of successful reform and rehabilitation.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is conduct involving questionable judgment, 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.

Under AG ¶ 16 conditions that could raise a security concern and may be disqualifying include AG ¶ 16 (d) "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected

that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

information.” This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations.”

Since 1999, Applicant has had 10 speeding tickets and 10 additional tickets for traffic violations. During the first six months of this year, Applicant has received three speeding tickets. Receiving traffic tickets is inappropriate behavior, but as minor traffic offenses do not show Applicant to be untrustworthy or unreliable. I find for Applicant as to SOR ¶ 2 a.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s life and attitude has undergone a great improvement since October 2006. He has changed from routinely drinking to the point of passing out and contemplating suicide, to where he feels good when he wakes up. His life is in order.

Applicant is an alcoholic and will always be an alcoholic, but is now a sober alcoholic. His life has markedly improved from sitting home alone each night with a shotgun in his mouth wondering if he should pull the trigger because he could not stand living life, to now, when he sees life as good and beautiful. He enjoys living life. Applicant was sincere, open, and honest at the hearing. It is clear he understands his alcohol problem. He has not tried to hide his past or shade the truth. He acknowledged he was a drunk and an alcoholic. He told it as it is, and it was not a pretty picture. However, his involvement with AA, his understanding of his alcohol problem, his commitment, and sobriety has vastly improved his life.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the alcohol consumption, criminal conduct, and personal conduct security concerns.

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, Alcohol Consumption:	FOR APPLICANT
Subparagraph 1.a – 1.g:	For Applicant
Paragraph 2, Criminal Conduct:	FOR APPLICANT
Subparagraph 2.a – 2.i:	For Applicant
Paragraph 3, Personal Conduct:	FOR APPLICANT
Subparagraph 3. a and 3.b:	For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge