



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



In the matter of:)
)
-----) ISCR Case No. 08-00019
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 30, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant mitigated security concerns arising under Guideline E (personal conduct) but not under Guidelines J (criminal conduct) and G (alcohol consumption). Clearance is denied.

Statement of the Case

On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant,¹ 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.² The SOR alleges security concerns under

¹Government Exhibit (GE) 8 (Statement of Reasons (SOR), dated June 30, 2008). GE 8 is the source for the facts in the remainder of this paragraph unless stated otherwise.

²On 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

Guidelines J (criminal conduct), E (personal conduct) and 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 July 22, 2008, and elected to have his case decided with a hearing (Government Exhibit (GE) 9). On August 19, 2008, the case was assigned to me. At the hearing held on September 17, 2008, Department Counsel offered six exhibits (GEs 1-6) (Transcript (Tr.) 17), and Applicant offered three exhibits (Applicant's Exhibits (AE) A-C) (Tr. 38-39). There were no objections, and I admitted GE 1-6 and AE A-C (Tr. 17, 39). I received the transcript on September 22, 2008.

Findings of Fact³

Applicant admitted in his response to the SOR all of the SOR's allegations, except for SOR ¶ 3c with explanations. His admissions are accepted and 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 30 years old (Tr. 5).⁴ He received a high school Graduate Equivalency Diploma (GED) in 1994 (Tr. 5). He attended community college for about two years off and on from 2003 to 2008 (Tr. 6, 28). He majored in management (Tr. 6). His grades in school are excellent (Tr. 28). He married in April 2004 (Tr. 18). He has a 12-year-old step daughter, and a son, who was born in July 2005 (Tr. 19). He does not currently hold a security clearance (Tr. 38). He does not have any prior military service.

Criminal Conduct

In 1994, Applicant was found guilty of two misdemeanors. On August 16, 1994, he was found guilty of driving 74 miles per hour (mph) in a 55 mph zone on July 1, 1994, and sentenced to a fine (SOR ¶ 1.a, GE 3 at 1, GE 9). On December 1, 1994, he was found guilty of driving 95 mph in a 55 mph zone on September 5, 1994, and sentenced to 10 days in jail (SOR ¶ 1.b, GE 3 at 2, GE 9).

under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (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.

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

⁴GE 1 (Electronic Questionnaire for Investigations Processing (e-QIP), dated Jan. 24, 2007, will be referred to as a security clearance application in this decision). GE 1 is the source for the facts in this paragraph, and the next paragraph unless otherwise stated.

In 1995, Applicant was found guilty of one misdemeanor. On June 26, 1995, he was found guilty of improper driving on June 13, 1995, and sentenced to a fine (SOR ¶ 1.c, GE 3 at 4, GE 9).

In 1997, Applicant was found guilty of one felony and misdemeanor. On April 17, 1997, he was found guilty of unlawful wounding on or about September 8, 1996, and sentenced to five years in the state penitentiary (suspended), and placed on supervised probation for five years (SOR ¶ 1.d, GE 9). On July 21, 1997, the court found him guilty of improper driving on June 8, 1997, and sentenced to a fine (SOR ¶ 1.e, GE 3 at 7, GE 9).

In 1998, Applicant was found guilty of one misdemeanor. On August 10, 1998, he was found guilty of public intoxication on July 8, 1998, and sentenced to a fine (SOR ¶ 1.f, GE 4 at 1, GE 9).

In 2001, Applicant was found guilty of one misdemeanor. On August 27, 2001, he was found guilty of being drunk in public on July 16, 2001, and sentenced to a fine (SOR ¶ 1.g, GE 4 at 4, GE 9).

In 2002, Applicant was found guilty of one misdemeanor. On March 29, 2002, he was found guilty of driving while intoxicated (DWI) on October 23, 2001 (GE 4 at 5, GE 9, SOR ¶ 1.h). He sentenced to pay a fine and his license was suspended for one year. *Id.*

On December 12, 2002, Applicant was arrested for several traffic offenses and DWI 2nd offense within five years (SOR ¶ 1.i, GE 4 at 8-13, GE 9). His blood alcohol was over the legal limit for alcohol. On February 28, 2003, all charges were *nolle prossed. Id.*

On September 14, 2003, Applicant was arrested for several traffic offenses and DWI (SOR ¶ 1.j, GE 4 at 14-16, GE 9). On December 12, 2003, he was convicted of DWI 2nd offense within five years, and sentenced to a \$500 fine, court costs of \$209, six months in jail (five months and 25 days suspended), and his license was suspended for three years. *Id.*

In his SOR response, dated July 22, 2008, Applicant said 95% of his offenses were alcohol-related (GE 9). He said he no longer consumes alcohol, which he believed was the source of his past behavior problems (GE 9).

Personal Conduct

On February 22, 1999, Applicant was charged with No Seat Belt, a traffic infraction (SOR ¶ 2.a, GE 4 at 2, GE 9). On March 17, 1999, the court found him guilty, and fined him \$25. *Id.*

On July 12, 2000, Applicant was charged with Failure to Stop Prior to Entering Roadway, a traffic infraction (SOR ¶ 2.b, GE 4 at 2, GE 9). On August 3, 2000, the court found him guilty, and fined him \$30. *Id.*

On August 19, 2005, Applicant was charged with Speeding, a traffic infraction (SOR ¶ 2.c, GE 4 at 17, GE 9). On September 13, 2005, the court found him guilty, and fined him \$75, and required payment of \$56 for court costs. *Id.*

On April 19, 2006, Applicant was charged with Speeding, a traffic infraction (SOR ¶ 2.d, GE 4 at 18, GE 9). On September 13, 2005, the court found him guilty, and fined him \$85 and required payment of \$56 for court costs. *Id.* SOR ¶ 2.e noted a security concern related to the criminal conduct above. His 2006 arrest was his most recent arrest (Tr. 19). He did not contest the accuracy of his arrests, tickets and convictions (GE 9, Tr. 34-35).

Applicant has been fully candid about his offenses as listed in this section and the preceding section, Criminal Conduct (GE 9). He disclosed his alcohol-related offenses on his January 24, 2007, security clearance application (GE 1).

Alcohol Consumption

An alcohol-related security concern was noted in SOR ¶ 3.a because of the criminal offenses outlined in SOR ¶¶ 1.f to 1.j above. Applicant was convicted of four alcohol-related offenses: (1) public intoxication on July 8, 1998; (2) drunk in public on July 16, 2001; (3) DWI on October 23, 2001; and (4) DWI 2nd Offense on September 14, 2003. On December 12, 2002, Applicant was arrested for DWI and his blood alcohol was over the legal limit for alcohol. However, this offense was *nolle prossed*.

Applicant began consuming alcohol when he was 15 or 16 (Tr. 29). He attended an alcohol safety program in 2001 (Tr. 31). The 2001 program focused on awareness of the problems that could be caused by alcohol use (Tr. 31). He was referred to alcohol treatment after his September 14, 2003, arrest and received 26 weeks of outpatient substance abuse treatment from March 15, 2004, to September 28, 2004 (SOR ¶ 3.b, GE 5, 9, Tr. 23-25, 32). He received a prognosis of “fair-to-good” and a diagnosis of 303.90 Alcohol Dependence in Early Remission. *Id.* The letter providing the prognosis and diagnosis was signed by a case manager with “MAC” and “NCC” next to her name, apparently indicating she is a “Master Addiction Counselor” and a “Nationally Certified Counselor.” Applicant was not aware of the alcohol dependence diagnosis until 2008 (Tr. 23). He has not received any alcohol counseling after 2004 (35).

Applicant attended hundreds of Alcoholics Anonymous (AA) classes (Tr. 25). However, he did not have an AA sponsor (Tr. 26). He monitored his alcohol consumption from 2004 to 2008, and limited it to low levels (Tr. 24-25). He “sparingly consumed alcohol” about once every two weeks from March 2008 until July 2008, when he stopped drinking alcohol altogether (Tr. 20). Previously, he successfully abstained from alcohol consumption for up to about six months back in 1998 or 1999 (Tr. 20-22). He did not agree that he was dependent on alcohol (Tr. 27). He denied that he was an

alcoholic and that he currently abused alcohol (Tr. 36). His wife had to drive Applicant because he did not have a driver's license, and she was anxious for him to complete the classes and attend AA meetings (Tr. 27). Even though he associates with people who drink alcohol, he does not drink alcohol himself (Tr. 28-29). Sometimes he does not attend a party, if he knows alcohol is being consumed (Tr. 29). He currently has a valid driver's license without driving restrictions (Tr. 29).

Applicant recognized the importance of controlling his alcohol consumption for the sake of his family and his career with a government contractor (Tr. 25). The security clearance process has really "opened [his] eyes" about alcohol consumption issues (Tr. 33-34, 41). He emphasized that since 2004 he had married, no longer associated with the alcohol-drinking single crowd, and had better judgment (Tr. 36-37. In July 2008, he recognized that he did not need to consume alcohol and he wanted to change his life and future prospects for the better (Tr. 34, 41).

Recommendations

Two of Applicant's supervisors and a co-worker at his current employment provided three letters supporting reinstatement of his clearance (AE A-C). They have known Applicant for about five years. They describe Applicant as a valuable member of the firm with a solid work ethic, leadership, willingness to learn and integrity. His contributions to his company have been numerous and valuable. His work is always professional. He is dependable, generous, honest, trustworthy, loyal and helpful. He loves his family and his friends and respects others in the community.

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.”⁵ 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).⁶

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

⁵ “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 (4th Cir. 1994).

⁶“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).

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.

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 J (Criminal Conduct), E (Personal Conduct) and G (alcohol consumption) with respect to the allegations set forth in the SOR.

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."

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying, ¶ 31(a), "a single serious crime," and ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." The allegations in SOR ¶¶ 1.a to 1.j (except for 1.i) are established. Applicant was convicted of eight misdemeanors and one felony. He admitted all offenses.

AG ¶ 32 provides four conditions that could potentially mitigate security concerns:

- (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;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (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.

None of the mitigating conditions fully apply to the offenses in SOR ¶¶ 1.a to 1.j. Four of the criminal offenses are alcohol-related, and others may be alcohol-related. In his SOR response, Applicant said 95% of his offenses were alcohol related (GE 9). There is still a risk that Applicant will return to alcohol abuse and that more offenses will occur. See Discussion in Alcohol Consumption Section, *infra*. There are some positive signs of rehabilitation. He admitted his misconduct and has no criminal offenses after

September 13, 2003, which is over five years ago. He is now married, has a family, and has performed well at his employment. He has stopped associating with his single friends, reducing the associations that enabled and facilitated his alcohol abuse. He completed his probation, paid his fines and court costs, and his driver's license is fully restored. He has demonstrated remorse and been substantially reformed. He received job training and has a good employment record. There is a sufficient evidentiary record in this case of his rehabilitation to merit a clearance eventually, provided his good behavior and alcohol abstinent behavior continue.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 information;

(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 information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior ; and (3) a pattern of . . . rule violations; and

(e) personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

SOR ¶ 2.a – 2.d allege four traffic violations in 1999, 2000, 2005 and 2006. SOR ¶ 2.e re-alleges all of the criminal offenses in SOR ¶ 1 discussed above as personal conduct security concerns. AG ¶¶ 16(c), 16(d)(1), 16(d)(3) and 16(e)(1) all apply.

AG ¶ 17 provides four conditions that could mitigate security concerns in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

* * *

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶ 17(c) mitigates SOR ¶ 2.a – 2.d because his four traffic violations in 1999, 2000, 2005 and 2006 are relatively minor. They resulted in fines of \$25, \$35, \$75, and \$85. They are infrequent.

SOR ¶ 2.e lists alcohol-related criminal offenses. AG ¶¶ 17(c), 17(d) and 17(g) all apply in part. These criminal offenses cannot be mitigated for the reasons stated in the next section. See Discussion in Alcohol Consumption Section, *infra*. There is still a risk that Applicant will return to alcohol abuse and that more alcohol-related offenses will occur. There are some positive signs of rehabilitation. He admitted his misconduct and has no criminal offenses after September 13, 2003, which is over five years ago. He is now married, has a family, and has performed well at his employment. He has stopped associating with his single friends, reducing the associations that enabled and facilitated his alcohol abuse. See AG ¶ 16(g). He completed his probation, paid his fines and court costs, and his driver's license is fully restored. He has demonstrated remorse and been substantially reformed. He received job training and has a good employment record. There is a solid evidentiary record in this case of his rehabilitation. Most importantly, AG ¶ 17(e) fully applies. He disclosed his alcohol-related offenses on his January 24, 2007, security clearance application (GE 1). His security manager is well aware of his alcohol-related problems. Disclosure has eliminated his "vulnerability to exploitation, manipulation, or duress."

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(b), 22(c), 22(d), 22(e), 22(f) and 22(g) do not apply. Applicant did not have any alcohol-related incidents at work. 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 addiction counselor, this credential does not meet the requirements of AG ¶¶ 22(d) or 22(e). He received counseling in an “alcohol safety program” in 2001 and admitted he subsequently had a relapse; however, there is insufficient evidence that this was “an alcohol rehabilitation program.” Additionally, the outpatient alcohol treatment program he received in 2004 did not result in advice to abstain from alcohol consumption. It would be unfair to require abstinence when he was not told it was required.

AG ¶ 22(a) applies. Applicant was convicted of two DWIs, drunk in public and public intoxication.

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) applies in part because Applicant had only four documented alcohol-related incidents between 1998 and 2003 that had an adverse effect on his life. He was convicted of two DWIs, drunk in public and public intoxication. These four events considered in isolation are somewhat infrequent or isolated, and not recent. He does not drink alcohol and drive, and accordingly he receives some credit because, “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.” AG ¶ 23(a), cannot be fully applied because he continued to consume alcohol up until July 2008. Additionally, he admitted returning to alcohol consumption after previously abstaining from alcohol consumption for up to six months.

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 an alcohol abuse treatment program in 2004, he stopped attending Alcoholics Anonymous meetings and does not currently attend any other alcohol treatment program. He stopped consuming alcohol in July 2008 just about two months before his hearing. He did not fully recognize that his alcohol problem raises security concerns until too recently 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 more substantial alcohol abuse than Applicant's that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. 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). 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).

After careful consideration of the Appeal Board's jurisprudence on alcohol consumption, I conclude his continued alcohol consumption up until July 2008 is simply too recent to mitigate all alcohol consumption security concerns.

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 his clearance. Applicant revealed his alcohol-related offenses on his security clearance application, in his response to DOHA interrogatories, and at his hearing. He does not associate with his alcohol consuming friends. Now that he is married, has a family and is in the workforce, the consequences of alcohol abuse will be more severe. He has avoided alcohol-related criminal offenses for five years. He completed an alcohol safety program in 2001, an alcohol treatment program in 2004, and received the benefit of “hundreds” of Alcoholics Anonymous sessions. His prognosis from the 2004 alcohol treatment program was “fair-to-good.” Applicant is a valued employee with excellent potential. There is no evidence at his current employment of any disciplinary problems. There is no evidence of disloyalty or that he would intentionally violate national security. His law-abiding character and good work performance over the last five years show some responsibility, rehabilitation and mitigation. His co-workers and supervisors support approval of his clearance. I am satisfied that his current judgment, reliability, trustworthiness, and his current ability or willingness to comply with laws, rules and regulations shows 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 and/or dependence for many years. He has four alcohol-related involvements with law enforcement resulting in criminal convictions. Nevertheless, he continued to drink alcohol up until July 2008. His decisions to engage in criminal conduct after consuming alcohol to intoxication were 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. His problems with alcohol cannot be mitigated at this time. Such conduct raises a serious security concern, and a security clearance is not warranted at this time. However, if Applicant can continue to abstain from alcohol consumption for another year, he will have shown sufficient judgment and self-control to warrant favorable consideration for access to classified information.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the security concerns pertaining to personal conduct, but not criminal conduct or 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”⁷ and

⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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 J: Subparagraphs 1.a to 1.j:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a to 2e:	FOR APPLICANT For Applicant
Paragraph 3, Guideline G: Subparagraph 1.a: Subparagraph 1.b: Subparagraph 1.c:	AGAINST APPLICANT Against Applicant For Applicant Against 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.

Mark W. Harvey
Administrative Judge