



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



In the matter of:)
)
-----) ISCR Case No. 08-09214
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: Witness (W), Personal Representative¹

July 7, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant has a lengthy history of binge alcohol consumption. Since 2003, Applicant has been involved in several alcohol-related incidents with law enforcement or the courts. He received outpatient alcohol-related treatment and attended some Alcoholics Anonymous (AA) meetings. In 2004, a clinical psychologist diagnosed him as alcohol dependent. He continues to consume alcohol. Eligibility for access to classified information is denied.

Statement of the Case

On December 12, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (SF-86). (Government Exhibit (GE) 1) On August 5, 2009, DOHA issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

¹Applicant's personal representative (W) is also his fiancé and a witness. Her name is not included for privacy reasons.

The SOR alleges security concerns under Guideline G (alcohol consumption). (Hearing Exhibit (HE) 4) 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 a security clearance for Applicant. DOHA then recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On August 26, 2009, Applicant responded to the SOR allegations. (HE 4) Applicant did not request a hearing. Department Counsel requested a hearing before an administrative judge. On January 8, 2010, Department Counsel announced she was ready to proceed on Applicant's case. On January 19, 2010, DOHA assigned Applicant's case to me. On February 16, 2010, the case was scheduled for a hearing on March 2, 2010. (HE 2) The hearing was terminated because Applicant requested a delay to consult with counsel and review documents. (Hearing transcript (Tr.) from first hearing) On May 6, 2010, Department Counsel and Applicant agreed that the hearing could be held on June 3, 2010. (Tr. 17-18) On May 14, 2010, DOHA issued a hearing notice setting the hearing for June 3, 2010. (Tr. 17; HE 2) Applicant's hearing was held on June 3, 2010. At the hearing, Department Counsel offered nine exhibits (GE 1-9) (Tr. 21-22), and Applicant offered two exhibits (Tr. 12, 23-24; AE A-B) Applicant did not object to the admissibility of GE 1-9. (Tr. 21-22) Department Counsel did not object to my consideration of AE A-B. (Tr. 23-24) I admitted GE 1-9 (Tr. 21-22) and AE A-B. (Tr. 23-24) Additionally, I marked two hearing notices, the SOR, and the response to the SOR as HE 1-4. On June 21, 2010, I received the transcript. I held the record open until June 21, 2010. (Tr. 117-118, 140) No post-hearing exhibits were received. (HE 5)

Findings of Fact²

In Applicant's response to the SOR, he admitted the conduct alleged in SOR ¶¶ 1.b to 1.f, and 1.h to 1.n. (HE 4) He denied the allegations in SOR ¶¶ 1.a and 1.g. (HE 4) His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 33-year-old employee of a Government contractor (Tr. 76; GE 1).³ His current employer has employed him for more than six years. (Tr. 77) He served in the Air Force from July 1995 to April 2004. (Tr. 78; GE 1) He reached the grade of E-5; however, at the time of his discharge, he was an E-2. (Tr. 78) He married in December 1997, and divorced in June 2002. (GE 7 at 1) He remarried his former spouse (FS) in February 2004, and they were divorced in 2008. He has two children. He completed various computer and automation-related courses. (Tr. 76) Applicant has not attended college. (GE 1) Applicant has held a top secret clearance with access to sensitive compartmented information (SCI). (Tr. 77, 99) He currently holds an interim secret

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Applicant's SF-86 (GE 1) is the source for the facts in this paragraph, unless stated otherwise.

clearance. (Tr. 77) He was never investigated or disciplined for compromising classified information. (Tr. 100)

Alcohol consumption and rehabilitation treatment

Applicant consumed alcohol at times to excess to the point of intoxication and had alcohol-related blackouts from approximately 1992, when he was age 16, to at least December 2008. (Tr. 73-74; SOR ¶ 1.a; GE 2 at 2) He received an alcohol evaluation in about March 2002; however, the March 2002 evaluation did not result in a diagnosis of alcohol abuse or dependence. (SOR ¶ 1.b; HE 4) Applicant was in the Air Force from ages 18 to 27. (Tr. 98) During those nine years, he said he had five alcohol-related incidents.⁴ (Tr. 98)

Applicant's April 13, 2003 driving while intoxicated offense

On April 12 and 13, 2003, while Applicant was in standby status, he consumed alcohol. (Tr. 94; GE 9 at 9) He went to bed at 3:00 am on April 13, 2003. (Tr. 94) Three hours after going to bed, he was driving to see FS, and he hit a parked tractor trailer. (Tr. 94; GE 7 at 1; GE 9 at 1, 4) No one was injured in the accident. (GE 7 at 1) He was arrested and charged with driving under the influence of alcohol (DUI). (SOR ¶ 1.c; HE 4) His blood alcohol content (BAC) was .223. (Tr. 94; GE 9 at 1) He was found guilty and sentenced to pay a \$350 fine. (GE 7 at 2) His driver's license was suspended for three months. (SOR ¶ 1.c; GE 1 at 3; GE 7 at 2; GE 9 at 9; HE 4) He completed an eight-hour class concerning alcohol consumption. (GE 7 at 2) In his response to a letter of reprimand for the DUI, he stated, "I have nothing but regret for what I have done. . . . this is an isolated incident and this will NEVER happen again. . . . I want to reiterate that nothing like this will ever happen again." (emphasis in original) (GE 9 at 4)

On September 23, 2003, Applicant made a written statement to a Defense Security Service special agent. (GE 7) Applicant said he had an alcohol-consumption evaluation which determined he "did not have an alcohol problem." (GE 7 at 2) He stated, his "arrest for DUI in Apr 03 was an isolated incident. I would normally drink socially, and very sporadically, drinking about two beers or two drinks, maybe every few weeks." (GE 7 at 2) He commented that since his "arrest in Apr 03, I no longer drink alcohol at all. I do not drink and drive." (GE 7 at 3)

Applicant's commander determined he was derelict in the performance of his duties by becoming intoxicated while in standby status. (SOR ¶ 1.d; GE 9 at 4; HE 4) On May 14, 2003, his command imposed nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for this offense. (SOR ¶ 1.d; GE 9 at 7-9; HE 4) His punishment included a suspended reduction in grade and forfeiture of \$200

⁴The SOR in ¶¶ 1.c, 1.f, 1.h, and 1.j lists four alcohol-related incidents during those nine years. The SOR does not include the allegation that he assaulted FS in January 2004. (GE 4 at 6) FS recanted her allegation of assault in January 2004 and no adverse action was taken against Applicant. (GE 4 at 6) I consider the alleged January 2004 assault to be unsubstantiated. No adverse inference is made against Applicant for the alleged January 2004 assault of FS.

pay two months; however, he completed the suspension period without vacation of the suspended reduction in grade. (Tr. 100-101; GE 9 at 9)

On April 14, 2003, Applicant received an alcohol evaluation. He was diagnosed as having "Alcohol Intoxication." (SOR ¶ 1.e; GE 4 at 30, 34; HE 4) The evaluation noted he had two factors weighing towards alcohol dependence: "increased tolerance" and "social/occupational impairment as indicated by DUI." (GE 4 at 34) The evaluator recommended "Basic Education" as a corrective remedy. (GE 4 at 35)

Applicant's other alcohol-related offenses and evaluations

In October 2003, Applicant received NJP under Article 15, UCMJ, for assault. (SOR ¶ 1.f; HE 4) He consumed approximately four beers and part of a pitcher of beer before participating in an altercation with FS. (SOR ¶ 1.f; GE 4 at 24; HE 4) See the statement of W, *infra*, for extenuating information concerning altercations between Applicant and FS.

From November 2003 to January 2004, Applicant received outpatient alcohol treatment for a diagnosed condition of "Alcohol Abuse." (SOR ¶ 1.g; GE 4 at 11-21, 28) The November 4, 2003 medical report listed two established criteria for alcohol abuse: "recurrent substance-related legal problems" and "continued use despite recurrent problems caused or exacerbated by the use." (GE 4 at 28) It also listed one factor relating to alcohol dependence, "increased tolerance." (GE 4 at 28) He described three hangovers, one blackout, passing out once, being drunk three times, "buzzed" fifteen times, and binge drinking on twelve occasions in the last 12 months. (GE 4 at 26)

In February 2004, while on an Air Force base, Applicant went outside to urinate. (GE 3 at 5) The security police saw him, pursued him, and apprehended him. (GE 3 at 5) The security police alleged that he resisted apprehension. (GE 3 at 5) On February 26, 2004, medical personnel interviewed Applicant about his alcohol consumption. He said that prior to the February 2004 incident where he allegedly resisted arrest, he consumed nine alcohol drinks. (GE 4 at 6) He received a diagnosis of "Alcohol Dependence." (SOR ¶ 1.i; HE 4) The February 26, 2004 medical report listed four established criteria for alcohol dependence: "increased tolerance;" "using more than intended;" "social/occupational impairment;" and "continued use despite persistent or recurrent . . . psychological (e.g. depression/anxiety) consequences." (GE 4 at 10) The February 26, 2004 medical report said the diagnosis "does have a negative impact on the patient's trustworthiness and reliability to properly safeguard classified information." (GE 4 at 10-11) This medical report was signed by an alcohol and drug abuse counselor and a clinical psychologist. (GE 4 at 11) In March 2004, Applicant received NJP under Article 15, UCMJ, for communicating a threat, disorderly conduct, and resisting apprehension. (SOR ¶ 1.h; HE 4) He received a letter of reprimand and a reduction in grade. (SOR ¶ 1.h; HE 4)

In April 2004, Applicant was found sleeping on the ground near a fence. (SOR ¶ 1.j; HE 4) He was charged with being drunk and disorderly. (SOR ¶ 1.j; HE 4) In April 2004, he received alcohol-related outpatient counseling, and he was again diagnosed

as “Alcohol Dependent.” (SOR ¶ 1.k; HE 4) Applicant’s commander wanted him to stay in the Air Force, and offered him the option of remaining in the service or accepting a general discharge under honorable conditions. (Tr. 102) Applicant asked to be discharged from the Air Force. (Tr. 102) In April 2004, he was discharged from the Air Force for a pattern of misconduct. (SOR ¶ 1.l; HE 4) He was barred from the local military installation, and he received a general discharge under honorable conditions. (SOR ¶ 1.l; HE 4) He explained that he did not complete the alcohol-counseling program recommended by medical personnel because he was discharged from the Air Force. (SOR ¶ 1.g; Tr. 75; GE 4) When he left active service, he believed he could control his alcohol consumption. (Tr. 97) From June 2004 to May 2006, Applicant said he consumed “little to no[]” alcohol. (Tr. 96)

On May 6, 2006, Applicant consumed alcohol before becoming involved in an altercation with FS. The police arrested him and charged him with domestic assault (third degree). (SOR ¶ 1.m; GE 5 at 4, 12-13; GE 6 at 3; HE 4) He pleaded guilty to criminal attempt (third degree) because he wanted to protect FS’s military career. (GE 5 at 8) He thought her command would take adverse action against her for her “revengeful behavior against me” if she abandoned her allegation of assault (GE 5 at 8). He was sentenced to six months of probation and ordered to attend AA meetings once a week for six months. (GE 5 at 10; GE 5 at 7) The court ordered him to abstain from alcohol consumption and to pay court costs, fees, and fines. (GE 5 at 6-10) On March 14, 2007, he completed all requirements ordered by the court. (GE 4 at 8; GE 5 at 10) On March 21, 2007, the probation office released him from probation. (GE 5 at 9) He stopped consuming alcohol from May 2006 until August 2008. (Tr. 96)

In March 2009, Applicant felt stress because of problems he had with FS. (Tr. 103) He consumed about ten drinks of alcohol, and then drove a vehicle. (Tr. 83) The police arrested Applicant for DUI.⁵ (Tr. 83) His blood alcohol content (BAC) was a little above .15. (Tr. 93) In July 2009, he pleaded guilty to DUI, and the court ordered him to attend ten AA meetings. (Tr. 84-85) He promised himself that he would not consume alcohol again. (Tr. 114) The court also ordered nine months of probation and suspended his driver’s license for 90 days. (Tr. 84-86) The court ordered him not to drink alcohol while he was on probation, and he complied with this requirement. (Tr. 86-87) He passed eight urinalysis tests, which checked for alcohol consumption. (Tr. 87) He did not report the March 2009 DUI to his security officer. (Tr. 86)

Applicant said, “I occasionally only drink to excess,” and he denied that he was an alcoholic because he did not have physical cravings for alcohol. (Tr. 88, 112) He was not physically dependent on alcohol. (Tr. 112-113) When he went to AA meetings, he did not acknowledge that he is an alcoholic. (Tr. 89) Applicant’s most recent attendance at an AA meeting was four months ago. (Tr. 81, 87) He consumed alcohol about once a

⁵Applicant objected to having to disclose the March 2009 DUI because it was not part of the discovery materials provided to him. (Tr. 82-83) I overruled his objection; however, I held the record open after his hearing to allow him to obtain and present additional mitigating information relating to his DUI and 2009 alcohol-related counseling. (Tr. 81) The SOR was not amended, and the March 2009 DUI will not be used to establish a disqualifying condition. (Tr. 82-83) It is relevant to the whole-person concept. See n. 7, *infra*.

week, and his alcohol consumption is on the weekends. (Tr. 98) Two weeks before his hearing, he drank five drinks containing alcohol. (Tr. 78)

After his March 2009 DUI, a medical professional (MP) evaluated his alcohol consumption during his 14 weeks of counseling or treatment. (Tr. 89, 104-105) However, MP did not provide a copy of the evaluation to Applicant. (Tr. 89, 117-118) Applicant did not believe MP's evaluation concluded he was alcohol dependent, and he did not believe he was alcohol dependent. (Tr. 90, 97, 104) MP's evaluation did say that Applicant had a "compulsion to drink too much on occasion." (Tr. 105) MP told Applicant that Applicant did not really need the alcohol-awareness course or alcohol counseling. (Tr. 105) However MP did not have access to Applicant's history of alcohol-related incidents, and Applicant did not advise MP that there was a previous diagnosis of alcohol dependence. (Tr. 90)

Applicant continues to consume alcohol notwithstanding his 2004 diagnosis of "Alcohol Dependence." (Tr. 78, 113-114; SOR ¶ 1.n; HE 4) Applicant preferred to be a social drinker and to drink alcohol responsibly. (Tr. 115) He was not convinced that abstaining from alcohol completely was a "healthy" situation for him. (Tr. 115) Typically, Applicant drinks alcohol to excess when there is stress in his life. (Tr. 104) He did not disclose information about the SOR allegations to his employer because he was ashamed of his alcohol-related history. (Tr. 109)

W's statement

W has known Applicant and FS since June 25, 2004. (Tr. 25-26) She is a periohygienist. (Tr. 42) FS has periodically called the police and made false allegations against Applicant as a method of dominating and controlling him. (Tr. 29-41) In May 2006, FS, after consuming some alcohol, started an argument with Applicant. (Tr. 28) FS pushed Applicant, and he pushed her back. (Tr. 28) FS called the police, and the police arrested Applicant. (Tr. 29) Applicant decided to plead guilty because he wanted to protect FS from getting into trouble about making false statements to the police. (Tr. 30)

In August 2008, FS committed an unprovoked assault upon Applicant and W. (Tr. 32, 36) W's back and neck were damaged when FS grabbed W by the hair and pulled her head back and forth. (Tr. 36) W was further injured when FS jumped on top of W, causing W to fall to the ground and resulting in a severe cut to W's back. (Tr. 36) W was taken by ambulance to a hospital. (Tr. 37) The county district attorney's office provided documentation permitting Applicant and W to register as victims. (Tr. 33-34) On November 19, 2008, W asked the district attorney to dismiss the charges against FS in order "to cover up what [FS] did." (Tr. 34-35, 41) W and Applicant wanted the charges against FS to be dismissed because Applicant's two children needed their mother's support. (Tr. 44) FS received diversion or probation for a year. (Tr. 45) Problems between FS and W have continued with FS and W obtaining restraining orders and the police questioning W. For example in April 2009, FS called the police and alleged W had kidnapped her daughter, when W was actually babysitting for FS's daughter. (Tr. 46)

On March 2, 2010, FS was present and prepared to make a statement on Applicant's behalf at his hearing. (Tr. 53, 55) However, FS and Applicant have a new dispute. (Tr. 53) FS and FS's new boyfriend wanted to take Applicant's children to a different state; however, Applicant opposed the move. (Tr. 53) On June 3, 2010, FS was not present at his hearing.

W stated that from June 25, 2004, to May 2006, Applicant drank a couple of drinks on an infrequent basis. (Tr. 37) He stopped drinking alcohol from May to August 2008. (Tr. 38) W lives with Applicant. (Tr. 39) W observed Applicant drinking alcohol a couple of weeks ago. (Tr. 47-48) W encouraged Applicant to go out and have a couple beers with his friends. (Tr. 116) W consumed alcohol with Applicant and did not see a problem with Applicant's continued alcohol consumption. (Tr. 48) He drinks about four drinks containing alcohol, and her limit in an evening is three to four beers. (Tr. 49-50)

Character evidence

A coworker, who has had a security clearance for 27 years, has worked with Applicant for six years. (Tr. 55, 60) He has never noticed an odor of alcohol on Applicant's person, or any other alcohol-related problems. (Tr. 56, 62) He has never observed Applicant consuming alcohol. (Tr. 60-61) He was not aware of the allegations in the SOR or whether Applicant attended any AA meetings. (Tr. 60-61, 64) He did not know of any incidents involving Applicant's compromise of classified documents or national security. (Tr. 57) Applicant is a good worker with an excellent reputation as a worker and employee. (Tr. 57, 68) He supports reinstatement of Applicant's security clearance. (Tr. 55-64) If Applicant loses his clearance, he will lose his job, and Applicant's children will lose their medical and dental benefits. (Tr. 64)

Applicant's program manager (PM) has worked with Applicant since 2004. (AE A) PM has "never encountered a situation to question [Applicant's] integrity or professionalism," and he strives to fulfill his duties. (AE A) Applicant's work performance is exceptional, and he recommends reinstatement of Applicant's security clearance. (AE A) PM was not aware of Applicant's history of alcohol-related incidents. (Tr. 107-109)

Applicant's operations manager (OM) describes Applicant's technical knowledge as outstanding. (AE B) Disapproval of Applicant's security clearance will "result in degraded overall service to the customer." (AE B) OM is not aware of the alcohol-related allegations in the SOR. (Tr. 108-109)

Applicant contended that he should retain his security clearance because he wanted to continue to contribute to the national defense. (Tr. 106) He loves his country and wishes to continue to support the United States. (Tr. 107)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v.*

Egan, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), Section 3. Thus, 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. It is merely an indication that Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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 Guideline 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 provides:

- (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(e) to 22(g) do not apply. A licensed clinical social worker did not diagnose Applicant as alcohol dependent. The scope and quality of the “alcohol rehabilitation program” was unclear. Applicant has not failed to comply with a court order not to consume alcohol.

AG ¶¶ 22(a) to 22(d) apply. In April 2003 Applicant had a DUI, while he was on standby status. In November 2003, he disclosed that he had engaged in binge alcohol drinking on about twelve occasions in the previous year. In February 2004, he was drunk and disorderly and involved in an altercation with the Air Force special police. In April 2004, he was found passed out from excessive alcohol consumption. In February 2004, a psychologist diagnosed him with “Alcohol Dependence” and listed four established criteria for alcohol dependence: “increased tolerance;” “using more than intended;” “social/occupational impairment;” and “continued use despite persistent or recurrent . . . psychological (e.g. depression/anxiety) consequences.”⁶ In October 2003, and May 2006, after consuming alcohol, he engaged in physical altercations with FS. Applicant’s lengthy history of binge alcohol consumption and multiple alcohol-related incidents since 2003 establish these four disqualifying conditions.

⁶The well-respected psychiatric reference, *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision (DSM-IV-TR). Washington, DC, American Psychiatric Association, 2000, has defined “alcohol dependence” to be a psychiatric condition that meets the following diagnostic criteria:

A maladaptive pattern of alcohol use, leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

- (1) Tolerance, as defined by either of the following: (a) a need for markedly increased amounts of the alcohol to achieve intoxication or desired effect; or (b) markedly diminished effect with continued use of the same amount of the alcohol.
- (2) Withdrawal, as manifested by either of the following: (a) the characteristic withdrawal syndrome from the alcohol; or (b) the same (or a closely related) alcohol is taken to relieve or avoid withdrawal symptoms.
- (3) The alcohol is often taken in larger amounts or over a longer period than was intended.
- (4) There is a persistent desire or unsuccessful efforts to cut down or control alcohol use.
- (5) A great deal of time is spent in activities necessary to obtain the alcohol (e.g., visiting multiple doctors or driving long distances), use the alcohol, or recover from its effects.
- (6) Important social, occupational, or recreational activities are given up or reduced because of alcohol use.
- (7) The alcohol use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the alcohol (e.g., continued drinking despite recognition that an ulcer was made worse by alcohol consumption).

“Once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.” ISCR Case No. 07-00852 at 3 (App. Bd. May 27, 2008) (citing *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990)). Because the Government has met its initial burden concerning alcohol consumption security concerns, the burden now shifts to Applicant to establish any appropriate mitigating conditions. Directive ¶ E3.1.15. Four Alcohol Consumption mitigating conditions under AG ¶ 23 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.

SOR ¶¶ 1.b, 1.d, 1.e, and 1.g are mitigated. The alcohol evaluation Applicant received in March 2002 was favorable and not a diagnosis of alcohol abuse or dependence. The allegations in SOR ¶¶ 1.c, 1.d, and 1.e all directly relate to his April 2003 DUI. The three allegations are merged in the allegation into SOR ¶ 1.c. SOR ¶ 1.g does not constitute disqualifying conduct because he ended his alcohol-related counseling when he was discharged from the Air Force.

None of the mitigating conditions fully apply. Applicant began consuming alcohol at age 16. After his first DUI in April 2003, he told his command in his response to his letter of reprimand that he had stopped his alcohol consumption and such an incident would not recur. Applicant was involved in additional alcohol-related incidents and his command reduced him from E-5 to E-2. He was discharged from the Air Force after nine years of service. Although he was able to stop consuming alcohol for substantial periods of time, he subsequently resumed his alcohol consumption. From April 2003 to May 2006, he had four established alcohol-related incidents. He attended alcohol awareness classes, received alcohol counseling, and attended weekly AA meetings for

six months in 2004 and for ten weeks, ending four months before his hearing. However, he is not currently attending AA meetings or receiving any other ongoing alcohol-related counseling or treatment. He does not fully acknowledge his alcohol-consumption problems. He denies he is an alcoholic and believes he can consume alcohol responsibly despite strong evidence of a compulsion to continue drinking alcohol and the 2004 diagnosis of alcohol dependence. He has not received a positive prognosis from a medical professional. He has not made satisfactory progress in his alcohol rehabilitation program. He consumed alcohol as recently as two weeks before his hearing. In sum, the possibility of relapse continues to cast doubt on his current reliability, trustworthiness, or good judgment. Alcohol consumption concerns are not fully mitigated for the reasons stated under this guideline and in the whole-person concept, *infra*.

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 relevant 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 have incorporated my comments under Guideline G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Although there is some evidence supporting approval of Applicant's clearance, the mitigation evidence is insufficient to resolve security concerns at this time. Applicant had a very stressful relationship with FS, and he used alcohol to relieve stress. He attended some alcohol-awareness classes, and he received some alcohol-related counseling. He attended six months of weekly AA meetings in 2004 and ten weeks of AA meetings up to four months before his hearing. He is not on probation and his driver's license is not suspended. He contributes to his company and the Department of Defense. There is no evidence of any disciplinary problems unrelated to his off-duty alcohol-consumption at his current employment. There is no evidence of any drug abuse, financial problems, disloyalty, or intentional violations of national security. His character and good work performance show some responsibility, rehabilitation, and mitigation. His supervisors evidently support him or he would not have been able to

retain his employment after his security clearance was called into question. He provided written supportive statements from his project manager and operations manager as well as one coworker who made a statement at his hearing. He is an exemplary worker and employee. Applicant knows the consequences of excessive alcohol consumption, and he has made some efforts in the past to abstain from alcohol consumption. More recently, he has attempted to drink alcohol responsibly.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant has had a problem with alcohol use beginning when he was 16 years old. He has consumed alcohol at times to excess, with some periods of abstinence, for about 17 years. In April 2003, more than three hours after he stopped drinking alcohol, Applicant's blood alcohol content was .223 after the vehicle he was driving struck a parked tractor trailer. In February 2004 and April 2004, he was involved in alcohol-related incidents involving the police. In February 2004, an Air Force psychologist diagnosed him with being alcohol dependent, and he was discharged from the Air Force in April 2004 after nine years of service. In May 2006, he was involved in an alcohol-related altercation with FS that resulted in his conviction for criminal attempt. In March 2009, Applicant had his second DUI. His March 2009 DUI is considered for the limited issue of whether he has demonstrated successful rehabilitation under the whole-person concept.⁷ Even if there were no DUI in 2009, I would not support reinstatement of his security clearance. His medical treatment notes, admissions, and discharge summaries describe his history of alcohol consumption and establishment of his alcohol dependency.⁸ I am not convinced he fully recognizes the importance of overcoming his alcohol problems and establishing a significant pattern of abstinence.⁹

⁷In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)).

⁸See Federal Rule of Evidence 803(4) and commentary explaining why statements made to obtain medical treatment are deemed reliable.

⁹For 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).

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 or alcohol dependence that full mitigation of security concerns is not possible unless there was a fairly lengthy period of abstaining from alcohol consumption.¹⁰ Applicant continues to consume alcohol. His limited rehabilitative efforts and lack of fundamental changes in behavior are important manifestations that increase security concerns. The likelihood of recurrence of alcohol consumption is still sufficiently probable to require more time with continued abstinence. Lingering doubts remain concerning his current reliability, trustworthiness, or good judgment. Abstinence from alcohol consumption for a significant period of time is needed to provide sufficient assurance that he will not return to alcohol consumption.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 12968, the Directive, the Regulation, the AGs, and other cited references to the facts and circumstances in the context of the whole person. For the reasons stated, Applicant has not mitigated or overcome the Government's case, and he is not 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 |
| Subparagraphs 1.d to 1.e: | For Applicant |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | For Applicant |
| Subparagraphs 1.h to 1.n: | 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 HARVEY
Administrative Judge

¹⁰ 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).