



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



In the matter of:)
)
-----) ISCR Case No. 08-09286
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

August 28, 2009

Decision

HARVEY, Mark, Administrative Judge:

From 2005 to 2008, Applicant was involved in four alcohol-related incidents. He failed to comply with two court orders. He continues to consume alcohol. Applicant failed to mitigate security concerns arising from alcohol consumption and personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On July 23, 2007, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) for National Security Positions or security clearance application (SF-86) (Item 5). On March 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, 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 and modified. The revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, are effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR alleges security concerns under Guidelines G (Alcohol Consumption) and E (Personal Conduct). 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, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On April 21, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 4). A complete copy of the file of relevant material (FORM), dated May 27, 2009, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.¹ Applicant did not provide a response to the FORM. The case was assigned to me on August 7, 2009.

Findings of Fact²

In his response to the SOR, Applicant admitted the SOR allegations with some explanations and limitations (Item 4). Although he admitted the police cited him for assault upon a female, he did not specifically admit that he assaulted a female (Item 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 findings of fact.

Applicant is 23 years old and has been employed by a government contractor since May 2007 as an intern between college sessions (Item 5).³ From 2001 to 2004, Applicant attended high school. From 2004 to 2007, he attended college. He is not married and does not have any children. Although drug involvement was not cited as a security concern in the SOR, his SF-86 indicates he used marijuana six times during his first year of college.

Alcohol consumption (SOR ¶¶ 1.a to 1.e)

Applicant consumed alcohol, occasionally to excess from about 2002, when he was 16 years old, to November 2008.⁴ During high school, he drank alcohol about once a month and consumed about five beers (Item 6). In college he drank about two days per week, and he drank about seven beers or two or three mixed drinks (Item 6).

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated May 28, 2009; and Applicant's receipt is dated June 2, 2009. The DOHA transmittal letter informed Applicant that he had 30 days after his receipt to submit information.

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

³ Applicant's SF-86 (Item 5) is the source for the facts in this paragraph, unless stated otherwise.

⁴ This paragraph addresses the allegations in SOR ¶ 1.a (Items 1, 4). SOR ¶ 1.a generally describes unremarkable alcohol consumption over a lengthy period without specifically raising any alcohol-related disqualifying conditions. Therefore, I find "For Applicant" on page 13, *infra*.

In April 2005, the police cited Applicant, who was 18 years old, for drinking alcohol in public and open container containing alcohol.⁵ He had consumed two beers (Item 6). The court sentenced him to pretrial diversion, 32 hours of community service, a \$200 fine and ordered him to attend a six-hour alcohol awareness class (Item 6). He was a minor at the time of the citation (Item 5).

In November 2007, two months after he completed his SF-86, the police arrested Applicant.⁶ He was charged with driving under the influence of alcohol (DUI) and speeding. He admitted that prior to his DUI arrest he consumed eight beers and one mixed drink (Item 6). He was driving 35 miles per hour in a 25 mile per hour zone (Item 6). His blood alcohol content was .179 on the first test and .205 on the second (Items 6, 8). Applicant pleaded no contest to DUI, and the speeding charge was dismissed (Item 6). The court found him guilty of DUI. The court sentenced him to probation for nine months (to January 8, 2009), loss of driver's license for 60 days, a \$400 fine, and ordered him to attend three courses (defensive driving, alcohol awareness, and victim's panel) (Items 6, 8). He had to pay court costs (\$44), lab costs (\$100), administrative fees (\$30), probation fees (\$225), and drug testing fees (\$45) (Item 8). When the Office of Personnel Management (OPM) investigator interviewed him in June 2008, he had not completed any of the courses because he moved to a different city in the same state where he had the DUIs (Item 6). In September 2008, he completed the MADD Victim Impact Panel (Item 7). On October 18, 2008, he completed an eight-hour alcohol education course (Item 7). In December 2008, he completed the eight-hour Attitudinal Dynamic Driving Course (Item 7).

After November 2007, he reduced his alcohol use because he wanted to stay out of trouble and wanted to obtain a security clearance (Item 6). He reduced his alcohol consumption to about one or two beers about three times per week (Item 6). He does not currently drink alcohol to intoxication (Item 6).

In March 2008, the police noticed Applicant was standing outside a bar holding a container containing alcohol.⁷ This conduct violates the law. The police warned Applicant about his conduct; however, he was not arrested or charged. Applicant said he was not aware that his conduct violated the law.⁸

In March 2008, the police arrested Applicant for assaulting a female, who was in his home.⁹ He had consumed alcohol before the arrest. He explained that he asked a

⁵ This paragraph addresses the allegations in SOR ¶ 1.b (Items 1, 4).

⁶ This paragraph addresses the allegations in SOR ¶ 1.c (Items 1, 4).

⁷ This paragraph addresses the allegations in SOR ¶ 1.d (Items 1, 4).

⁸ I find "For Applicant" on page 13, *infra*, because Applicant was not aware his conduct was an offense. Moreover, the police failure to arrest him is a good indicator of his lack of criminal responsibility.

⁹ This paragraph addresses the allegations in SOR ¶ 1.e (Items 1, 4).

quest to leave his house, and then pulled her sleeve to get her to the door (Item 7). He said the officer “agreed this was not a legitimate incident” (Item 7). The police generated a report, which contained the victim’s description of Applicant’s conduct. She described him as being intoxicated and physically and verbally aggressive towards her (Item 7). The file does not contain any information contradicting Applicant’s statement that there was no judicial disposition of this allegation.

Personal conduct

In May 2005, the court ordered Applicant to complete community service as part of his sentence for drinking alcohol in public and possession of an open container of alcohol.¹⁰ He failed to complete his court ordered community service as of November 20, 2008.

In April 2008, the court ordered Applicant to “abstain from the possession of and use of alcoholic beverages” for the next six months as part of his sentence for DUI (Item 8).¹¹ He was aware of this condition of his probation in April 2008 (Items 4, 7). Nevertheless, he continued to consume alcohol, asserting he did not consume alcohol in the county where the order not to consume alcohol was issued (Item 7).

Applicant has never completed the community service requirement ordered by the court after his April 2005 alcohol-related offense (Item 4). He explained he had not completed his community service requirement because he moved to a different city in the same state, and could not locate any places where he could perform his community service (Item 6). He received an extension after moving, and then the office responsible for ensuring he completed the community service never contacted him (Item 4). He assumed the community service was waived and his case was resolved (Item 4).

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

¹⁰ This paragraph addresses the allegations in SOR ¶ 2.a (Items 1, 4).

¹¹ This paragraph addresses the allegations in SOR ¶ 2.b (Items 1, 4).

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 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. 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 Executive Order 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 the 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 Guidelines G (Alcohol Consumption) and E (Personal Conduct) with respect to the allegations set forth in the SOR.

Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

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

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

AG ¶¶ 22(b) through 22(g) do not apply. He did not consume alcohol at work or have any alcohol-related incidents at work. Applicant's alcohol consumption problem was not diagnosed or evaluated by a qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) or by a licensed clinical social worker. Although he attended some alcohol awareness-type classes, he did not receive the benefits of a significant alcohol treatment program. He was not diagnosed as an alcohol abuser or as being alcohol dependent. Binge drinking is not defined and may require more significant alcohol consumption than Applicant's. Although Applicant failed to comply with a court

order not to consume alcohol, AG ¶ 22(g) does not apply because there was no allegation in the SOR under ¶ 1 concerning violation of this court order.

Applicant had four alcohol-related incidents involving police intervention or arrest. The most serious incident was his DUI in November 2007. AG ¶ 22(a) applies.

“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(a) - 22(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) does not fully apply. Applicant had four alcohol-related incidents involving the police from April 2005 to April 2008. When he responded to DOHA interrogatories on November 20, 2008, he said his most recent consumption of alcohol was on November 8, 2008. He described his current alcohol consumption in his SOR response as enjoying alcohol responsibly and avoidance of legal and personal problems resulting from excessive alcohol consumption. His four alcohol-related incidents involving police intervention are relatively frequent and recent. Without credible

evidence of his current rate of alcohol consumption the likelihood of recurrence of alcohol-related offenses cannot be sufficiently assessed to mitigate security concerns.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption.¹²

AG ¶¶ 23(b) to 23(d) do not fully apply. Applicant did not fully acknowledge or completely describe his history of alcohol consumption. He did not provide a thorough description of his current alcohol consumption. Although he was not diagnosed as being alcohol dependent, being an alcoholic, or an alcohol abuser, a clearer and more forthright description of his past alcohol use would have helped to erase lingering concerns. He may or may not be minimizing his alcohol consumption problem, refusing to fully acknowledge the extent of his alcohol consumption problem. Statements from colleagues, friends, or family members about his alcohol consumption would be helpful. SOR ¶ 1.a generally describes his history of alcohol use; however, I specifically find Applicant's descriptions of his history of alcohol use (Items 4, 7) to be accurate. Applicant has not completed an alcohol abuse treatment or counseling program. He has not described attendance at any Alcoholic Anonymous meetings. His history of alcohol problems and the lack of evidence of completion of rehabilitation programs exclude providing full mitigating credit under AG ¶ 23 at this time.

Applicant's statement about reducing his alcohol consumption after his DUI and his current responsible alcohol consumption are positive developments, showing that he recognizes the importance of overcoming his alcohol problems. However, after careful consideration of the Appeal Board's jurisprudence on alcohol consumption,¹³ I conclude his four alcohol-related incidents from 2005 to 2008, and the absence of detailed information about his current alcohol consumption are significant factors weighing against mitigating alcohol consumption concerns.

¹²See 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).

¹³For 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).

Guideline E, Personal Conduct

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

Conduct involving questionable judgment . . . 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 several conditions that could raise a security concern and may be disqualifying in this case in regard to providing the SOR allegations:

(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 to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's 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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The SOR alleges two personal conduct allegations. He failed to complete his court-ordered community service requirements (SOR ¶ 2.a). He failed to comply with a court-order, which required him to abstain from alcohol consumption for six months (SOR ¶ 2.b).

AG ¶¶ 16(c) and 16(d)(1) both apply because the record contains substantial evidence that Applicant engaged in actions showing questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. AG ¶ 16(d)(3) applies because he violated court orders, which are rules. AG ¶ 16(e)(1) applies. His excessive alcohol consumption creates a vulnerability to exploitation, manipulation, or duress because it is an activity, which adversely affects his personal, professional, and community standing.

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

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(f) the information was unsubstantiated or from a source of questionable reliability; 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(a) and 17(b) do not apply because there are no allegations Applicant falsified a security document or failed to cooperate with a security investigation. AG ¶ 17(c) does not apply. His failures to comply with court orders are not minor offenses. His failure to complete his community service is an ongoing rule violation. His consumption of alcohol in violation of a court order occurred in 2008, which is relatively recent. Because there are multiple violations, the offenses are not “isolated.” The Appeal Board’s jurisprudence requires consideration of all such offenses in a non-piecemeal fashion. The Judge is required to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of his conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). These rule violations continue to cause doubt about Applicant’s current reliability, trustworthiness, and good judgment.

AG ¶¶ 17(d), 17(e), and 17(g) have some application, but do not apply to a sufficient degree to mitigate all security concerns under Guideline E. There are some positive signs of Applicant’s rehabilitation. He admitted the four alcohol-related incidents. He said he was currently drinking alcohol responsibly. No allegations of problems at his employment have surfaced. He received job training, attended college, and has a good employment record. These are important factors showing some rehabilitation. His security manager is well aware of his alcohol abuse problems. Disclosure of his alcohol abuse has reduced his vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(f) does not apply. He admitted his rule violations, and the rule violations are established.

In sum, Applicant’s failure to comply with court orders shows a significant lapse in judgment. After he received the SOR, he should have immediately contacted the court and resolved the issue of completion of his court-ordered community service. After he received the FORM, he was again informed that the failure to complete his community service was a security concern. His failure to take timely, aggressive action to resolve this security concern is too recent and serious to be mitigated at this time.

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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. I have incorporated my comments under Guidelines G and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is relatively young and immature. He knows the consequences of excessive alcohol consumption. Applicant contributes to his company and the Department of Defense. There is no evidence at work of any other disciplinary problems. There is no evidence of disloyalty or that he would intentionally violate 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.

The evidence against approval of Applicant's clearance is more substantial. Applicant had a problem with alcohol use beginning with his alcohol consumption as a minor. Although he received some alcohol awareness classes, he has not received alcohol counseling or treatment. He continues to consume alcohol. In 2008, the court ordered him to abstain from alcohol consumption; however, he continued to consume alcohol during the six month probation period. He continues to consume alcohol, and did not provide detailed information about his current alcohol consumption. In 2005, the court ordered him to perform community service. He did not perform the community service. Applicant received the SOR and FORM, which informed him of the security concern relating to his failure to resolve the issue of performing community service. Applicant did not provide proof that he either performed the community service or the court decided to waive this requirement. His actions show a lack of judgment in the context of security requirements. Such conduct raises a serious security concern, and a security clearance is not warranted. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to alcohol consumption and personal conduct.

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"¹⁴ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

¹⁴See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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: | For Applicant |
| Subparagraphs 1.b and 1.c: | Against Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 2.a and 2.b: | 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