



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



In the matter of:)
)
-----) ISCR Case No. 08-11888
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: James Green, Esquire

April 26, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On October 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct) and Guideline G (Alcohol Consumption). DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department on September 1, 2006.

On November 12, 2009, Applicant answered the SOR, and requested a hearing. He denied, with explanations, the factual allegations in SOR ¶¶ 1.a through 1.c, 2.a., and 2.b. He admitted the remaining allegations. DOHA assigned the case to me on January 8, 2010. DOHA issued a Notice of Hearing on February 17, 2010, and I convened the hearing as scheduled on March 2, 2010. Department Counsel offered 14 exhibits, which were admitted as Government Exhibits (GE) 1-14, without objection. Applicant testified on his own behalf and presented the testimony of three witnesses. He

offered nine exhibits, which were admitted as Applicant Exhibits (AE) A-I. DOHA received the transcript (Tr.) on March 5, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. After graduating from college in 1982, he entered Aviation Officer Candidate School. He served 23 years in the Navy, including overseas tours. (Tr. 88.) Applicant retired, as a commander, from the Navy in September 2005. (AE D.) He is married and has two daughters. He has been with his current employer since 2006. (GE 10.) Applicant has held a security clearance, including Sensitive Compartmented Information (SCI), since approximately 1983. (GE 2.)

In 2000, Applicant was the staff officer responsible for information operations (IO) while deployed with the Navy. He sent an email to a "national security" reporter suggesting that the reporter ask a specific question during a press briefing. The question concerned the Navy's handling of interdiction of oil in the Persian Gulf. Applicant did not tell anyone about the email at the time. (Tr. 94.) He is unaware if the question was asked at the press briefing.

While living in Denmark from 2002 until 2005, Applicant was stopped for driving over the speed limit, but he never received any violations for speeding during his stay. His regional security officer (RSO) confirmed that Applicant had diplomatic plates on his vehicle, and that if any vehicle registered with the United States Embassy had a traffic violation it would be noted. (AE F.) The RSO does not recall ever receiving such a notice for Applicant.

In 2004, Applicant was involved in a motor vehicle accident while driving home after consuming alcohol. Applicant consumed approximately four glasses of wine within five hours of the accident. (Tr. 103.) He also believes he was over the legal limit to safely operate a motor vehicle. (Tr. 178.) He was unable to stop and rear-ended the vehicle in front of him, but there was no police involvement. (GE 5.)

In June 2006, Applicant's current employer sponsored him for access to SCI. As part of the security process, he was interviewed by a representative from another agency. Applicant had a series of SCI interviews in 2007. (GE 4.) He also took three required polygraph exams due to areas of concern. (Tr. 101.)

During an SCI interview in April 2007, Applicant reported that he had driven on numerous occasions while intoxicated, although he was never formally charged or convicted of a Driving Under the Influence (DUI) or Driving While Intoxicated (DWI). (Tr. 164; GE 5.) He indicated during the interview that he was probably over the legal blood alcohol limit to drive, but the police officers decided not to arrest him. Applicant reported that since approximately 1978, he consumed, on the average, one or two alcoholic

beverages a day. At that time, he did not believe he had an alcohol problem, although his wife had mentioned to him on several occasions that she felt there was a problem due to his daily drinking habit. As a result of the interview, he was referred to a psychologist. (Tr. 191.)

In an August 20, 2007 interview, Applicant was further questioned about his alcohol use. He reported he currently consumes one beer and a glass of wine with dinner every other day. He could not recall the last time he was intoxicated. (GE 4.) During that interview, he also reported that “he felt bad about his disclosure to the media” in 2000, because he did not use “the proper chain of command.” Applicant emphasized that the information was not classified. (GE 4.)

A third SCI interview was conducted in November 2007. Applicant answered more questions concerning his alcohol use. He reported that it took approximately seven drinks consumed over a two-three-hour period, for him to become intoxicated. (GE 4.) He estimated that he consumed alcohol to the point of intoxication five times per year in the past five years. He acknowledged that on October 29, 2007, he consumed four to five alcoholic drinks in a two or three hour period. He planned to take a taxi because he felt intoxicated, but there were no taxis. He then decided to drive his car to return to his hotel. (GE 4.) He further explained that he dismissed his wife’s concern over his excessive use of alcohol in the past years. He denied having any problem with alcohol.

As a result of the discussions concerning Applicant’s alcohol use, he was requested to complete a psychological evaluation. In November 2007, a diagnosis of alcohol abuse by a government psychologist was made. He suggested that Applicant stop drinking. (Tr. 105.) The evaluation also revealed a history of failing to conform his behavior to social norms. The psychologist opined that Applicant’s long history of decision-making is based on a risk/benefit ratio or on the likelihood that he will be caught. (GE 4.) The agency psychologist rated Applicant a high risk for future instances of poor judgment, irresponsibility, and impulsivity.

It was not until his SCI investigation in 2007, that Applicant acknowledged that he intentionally “leaked” information to the media due to his frustrations with his military superiors (GE 4). He later acknowledged in 2007 that it was a mistake, and he should have “staffed it internally.” He expressed regret for his decision, despite the fact that it was not classified information. He felt that it was not the “company-man” thing to do. (Tr. 120.) He also admitted that he would never have told anyone at the time that he went through this unusual channel. He rationalized his decision because it was not specifically against any Uniform Code of Military Justice (UCMJ) article. (Tr.120.)

In January 2008, Applicant was denied his SCI clearance by another agency in part due to concerns about alcohol consumption and personal conduct. The decision concluded that Applicant has proven an unwillingness to follow laws, rules, and regulations. It cited him for a long history of questionable decision-making. (GE 4.)

In March 2008, Applicant requested a review (first level appeal) of the denial. (GE 7.) His appeal was reviewed. (GE 8.) In that review, it was noted that a concern was that Applicant “decided that the rules pertaining to others should not pertain to him.” (GE 8.) On June 10, 2008, the appeal was denied, and the original decision was sustained. (GE 9). Applicant did not appeal the decision further because he did not believe his DoD clearance would be affected. (Tr.101.) Applicant also explained that the next appeal would occur before a panel of five, and to overturn the decision, there would need to be a five-to-zero-vote. (Tr 189.)

In a September 2008 interview with OPM, Applicant reported that he “wanted to fully disclose any possible security issues, including using illegal drugs. He wanted to be perfectly honest.” He stated that the incidents from more than 20 years ago had been discussed in previous investigations in 1984, 1991, 1996, and 2002. (GE 3.)

In a November 2008 interview, Applicant reported to DOHA that an issue arose related to his alcohol use during his 2007 SCI investigation. When asked if he ever consumed alcohol over the legal limit in the last 20 years, Applicant responded “approximately one time per year.” (GE 3.) He told the interviewer that he did not believe that he had a problem with alcohol. He has not sought any additional counseling concerning alcohol.

In a March 2009 statement to accompany DOHA interrogatories, Applicant admitted that he did not disclose any drug use during previous investigations. He disclosed the use for the first time during the SCI interview in 2007. He also acknowledged that he had used illegal drugs while holding a security clearance in the 1980s. He acknowledged the use in the investigation and interviews since 2007, but he did not disclose any of the illegal drug use on any of his security clearance applications. (Tr. 157.) He also changed his statement concerning the 2000 email to the reporter. Applicant reported that he did not even receive a response after sending the email. (GE 3.)

In February 2010, Applicant was evaluated by a psychologist who administered a mental status exam and a Substance Abuse Subtle Screening Inventory (SASSI-2).The psychologist opined that Applicant did not have an “active diagnosis of substance abuse or dependence.” He completed a clinical interview and determined that alcohol has not impacted Applicant’s personal, social, or interpersonal relationships since 2007. (AE E.)

At the hearing, Applicant acknowledged that he consumed alcohol on a daily basis until at least November 2007. (Tr. 158). However, when he was aboard ship, there was no alcohol use. When not aboard ship, he said he had a beer on most days. Applicant believed that he has driven after drinking but he did not know whether he was over the “legal” limit. However, in his statement during his 2007 interview , he “estimated that he has consumed alcohol to the point of intoxication five times per year in the past five years.” He has driven while under the influence of alcohol on approximately three occasions in the past five years. The last such occasion occurred on October 29, 2007. (GE 4.) He also introduced a blood alcohol concentration

calculator (AE B) to show that given his weight and the amount of alcohol that he drank in the past, he would not have risen to the legal limit for intoxication.

Applicant has not attended any counseling sessions for excessive alcohol consumption. He claimed that he went to a VA hospital before preparing for the hearing to have an assessment. (Tr 177.) He also acknowledged that the 2007 diagnosis was a wake-up call, but he did not stop drinking. He also admitted that his wife had mentioned the issue many times but he discounted her opinion. (Tr. 193.) He does monitor his alcohol intake before driving. (Tr. 196.) Since January 2010, he has not had any alcohol to drink. He explained that this was due to his diet. He still drives after drinking alcohol. (Tr. 107.)

At the hearing, when questioned, Applicant stated that he admits that he filled out numerous security questionnaires, but never put down his drug use of more than 20 years ago on any security clearance applications. He knew that was a violation of UCMJ. He elaborated that he would have been basically admitting that he lied on the previous applications. (Tr. 199.)

Applicant's twenty-three-year friend, who has a distinguished Naval career, describes Applicant as a trustworthy person. However, he noted that the incident with the journalist "did not show the most mature judgment, and that Applicant could have used his chain of command more effectively." (Tr. 38.) He believes that Applicant exercises moderation in alcohol use and does not combine drinking and driving. (Tr. 30.) In sum, he describes Applicant's previous military and civilian experience as something of value. (Tr. 38.)

A Navy colleague considers Applicant an honest person. He expressed some concern, as a friend, about Applicant and his "exercise of alcohol (diagnosis of alcohol abuse." Applicant's colleague does not believe that he would compromise national integrity or any means of security. (Tr. 56.) However, Applicant's colleague was clear that the use of the email in 2000 should have gone through a higher level within the Navy. (Tr. 53.)

Applicant's 1984 flight instructor remembers him as an "outstanding student." (Tr. 73.) In 1995, Applicant had daily contact with his former instructor in a squadron. Applicant is described as a person with a strong performance record "who thinks out of the box." His longtime associate has never seen Applicant intoxicated in social situations. Applicant is described as a "top performer in the Navy" who can be trusted. (Tr. 80.) He recommends him for a security clearance.

Applicant submitted numerous letters of reference and commendations, including a September 2000 designation as Battle Watch Captain. (AE C). This designation was in place when Applicant sent the email to the reporter. He submitted various qualifications and fitness reports. (AE I). Applicant was consistently described as a superb Naval officer. He stated that he never received any reprimands or disciplinary actions during his military career.

Applicant's current employer regards him as an outstanding member of the team. (AE G.) He states Applicant does a superb job and has his complete trust and confidence. He also states he has seen Applicant socially on many occasions and that he has never observed any behavior that would cause him to question Applicant's conduct, judgment, or integrity.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2, the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,
- (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;
- (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.

(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;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and,

(g) association with persons involved in criminal activity.

In 2000, Applicant decided to send an email to a national security reporter because he was frustrated with his military supervisor's policy. He did not tell anyone about this action. Despite the fact that it was not classified information, it showed a disregard for following his chain of command. Applicant acknowledged in 2007, during an SCI investigation, that he intentionally "leaked" information to the media due to his

frustrations. He felt bad about the disclosure and acknowledged recently that it was not a good decision. He knew he was circumventing the chain of command in the Navy, but he chose to act on his own accord. The appropriate manner of responding was to inform his chain of command of what he was doing and not by covertly sending an email to a reporter.

Applicant admitted using poor judgment on numerous occasions when he felt intoxicated and decided to drive a car. As a result, he was involved in an auto accident in 2004.

AG ¶ 17 provides conditions that could mitigate security concerns:

(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.

The email incident was in 2000. Applicant, however, did not reveal the incident until he was in an SCI investigation. He now acknowledges that it was a poor decision and has some regret. However, he never disclosed this information before he was

confronted in 2007. Although it was not classified information, it showed a disregard for the chain of command. Applicant acted out of frustration. He did not show good judgment.

Although Applicant never received any speeding violations while living in Denmark, he admitted during his SCI investigation that he did speed while on the outlying freeways.

Applicant also chose to use poor judgment after drinking on numerous occasions. This conduct will be discussed under Guideline G. However, it does reflect on his ability to use good judgment over the years.

Although not specifically alleged conduct and not considered under Guideline H (drug involvement), Applicant's failure to tell his employer - the Navy - about his illegal drug use (including while holding a security clearance) on any security clearance applications is quite troubling. This lack of disclosure undermines his credibility and judgment. At the hearing, he acknowledged that he knew that not reporting this was a violation of the UCMJ. He also admitted that if he ever listed the early, and now irrelevant drug use, it would acknowledge that he lied during his entire career.

Applicant acknowledged that throughout his military career he never disclosed any information about his early drug use to the military. It was not until 2007, that Applicant chose to disclose the instances of illegal drug use, including use while holding a security clearance. In 2008, Applicant told OPM interviewers that he wanted to be totally honest but he then acknowledged at the hearing that he never disclosed any of the drug use because it would have shown that he lied in the numerous applications. He chose to disregard the rules.

Applicant's stellar Navy career and his character references weigh in his favor. However, the witnesses and the references could not have known about Applicant's deliberate failure to disclose material information. No one knew until 2007 about any of the above described incidents. I have considered that he has never been arrested, charged or disciplined in his lengthy career. He has not mitigated personal conduct security concerns.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

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

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program; and

(g) failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

Applicant admitted that in 2004, after drinking, he was involved in an accident. He admitted that the alcohol was probably a factor in the accident. He has never received a charge or conviction for DUI, but Applicant has admitted driving when he believed he had too much to drink. The latest incident was in October 2007. Applicant never considered that he had an alcohol problem, despite the fact that his wife mentioned it numerous times over the years.

Applicant's self-described drinking habits prompted a referral for an alcohol evaluation in November 2007. He received a diagnosis of alcohol abuse. He chose not to stop drinking even though it was suggested. He sought no treatment between 2007 and 2010. He did acknowledge that the diagnosis was a wake-up call. He curtailed his consumption of alcohol. Since January 2010, Applicant has not had any alcohol to drink, but he is abstaining for dietary purposes. He still intends to drink in the future.

In February 2010, Applicant was evaluated by another psychologist, who determined that based on the evaluation and SASSI, Applicant does not have an active diagnosis of alcohol abuse or dependence. The psychologist opined that Applicant is in sustained full remission.

Applicant's friends who have observed him socially did not report that he drank to intoxication. He never had any problems at work. He has never received a DUI or DWI.

AG ¶ 23 provides conditions that could mitigate security concerns:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

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

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

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

Applicant has changed his drinking habits. He curtailed his consumption since the diagnosis in 2007. He is now in sustained full remission according to a psychologist. He believes he has had a wake-up call. He recognizes that it is imprudent to drink and drive, but he does continue to do so. Other than seeing the psychologist in 2010 on two separate occasions, Applicant has not had any alcohol-related counseling. Applicant has mitigated the security concerns under alcohol consumption.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the

time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and conclude they are insufficient to overcome the government's case.

Applicant is a well-educated professional. He served in the Navy for 25 years. He held security clearances, including SCI since 1984. He has favorable recommendations and fitness reports. His Navy colleagues respect and trust him. He has never been reprimanded while in the military. His current civilian employer considers him an outstanding employee. He has never been charged or convicted of a DUI. He has changed his drinking habits since his 2007 diagnosis of alcohol abuse. He has a 2010 diagnosis of sustained alcohol abuse in full remission.

Applicant's personal conduct and disregarding rules and regulations is troubling. He admitted that it was a bad decision to send an email to a reporter in 2000. He understands that it was not proper to secretly send an email with operational connotations without clearing it first with his command. Applicant also chose not to disclose his early illegal drug use (including while holding a security clearance) until 2007 during an SCI investigation. Even more disturbing is the admission that Applicant made at the hearing that he never disclosed any early drug use on his many security clearance applications. He knew that it would be a problem and would confirm that he had lied during his career to the Navy.

As to conduct not alleged in the SOR, the Appeal Board has determined that it may be considered for several reasons. It may be considered to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances, to consider whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for whole-person analysis under Directive Section 6.3. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

Additionally, the Appeal Board has determined that even though security concerns are not alleged in the SOR, the judge may consider those security concerns when they are relevant and factually related to a disqualifying condition that was alleged in the SOR. ISCR 05-01820 at 3 n.4 (App. Bd. Dec. 14, 2006). Applicant received notice in SOR ¶ 1.c concerning the reasons his SCI was denied, including "dishonesty." I have considered Applicant's deliberate non-disclosure of his early illegal drug use on his

security clearance applications for the limited purpose of determining whether he is credible, whether his pattern of rule violations is mitigated under personal conduct, and as part of my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under personal conduct. He has mitigated the security concerns under the alcohol guideline.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a through 2.d:	For Applicant

Conclusion

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

NOREEN A. LYNCH
Administrative Judge